

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 April 18, 2023

17 10:02 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

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25 ECRO: KS

1 HEARING re Hearing Using Zoom for Government RE: Debtors'
2 Application for Entry of an Order (I) Authorizing the
3 Retention and Employment of Stout Risius Ross, LLC as
4 Valuation Advisor, Effective as of February 21, 2023,
5 and (II) Granting Related Relief [Docket No. 2335, 2458,
6 2460].

7
8 HEARING re Hearing Using Zoom for Government RE: Joint
9 Motion for Entry of an Order (I) Approving the Settlement By
10 and Among the Debtors, the Committee, and the Withhold Ad
11 Hoc Group and (II) Granting Related Relief. (Doc# 2334)

12
13 HEARING re Hearing Using Zoom for Government RE: Motion for
14 Entry of an Order (I) Approving the Settlement by and
15 Among the Debtors and Odette Wohlman and (II) Granting
16 Related Relief. (Doc# 2331, 2416)

17
18 HEARING re Hearing Using Zoom for Government RE: Series B
19 Preferred Holder's Motion for Entry of an Order Establishing
20 Estimation Procedure for The Intercompany Claim Between
21 Celsius Network LLC and Celsius Network Limited
22 in Furtherance of Formulating The Debtors Plan of
23 Reorganization. (Doc# 2367, 2438, 2471, 2472, 2478, 2480)
24 Hearing Using Zoom for Government RE: Motion of The Official
25 Committee of Unsecured Creditors for Entry of

1 an Order (I) Establishing Procedures to Estimate the
2 Intercompany Claim that Celsius Network, LLC has against
3 Celsius Network Limited and (II) Granting Related Relief.
4 (Doc## 2369, 2371, 2438, 2439, 2472, 2473, 2477, 2480)

5
6 HEARING re Hearing Using Zoom for Government RE: Motion of
7 the Official Committee of Unsecured Creditors (I) for
8 Authority to File a Class Claim Asserting Non-Contract
9 Claims on Behalf of Account Holders or (II) to Appoint a
10 Third-Party Fiduciary to Assert a Class Claim on Behalf of
11 Account Holders. (Doc## 2399, 2396, 2400, 2432,
12 2439, 2400, 2439, 2467, 2468, 2474 to 2476, 2482, 2484)

13
14 HEARING re Hearing Using Zoom for Government RE: First
15 Application for Interim Professional Compensation for
16 Kirkland & Ellis LLP and Kirkland & Ellis International LLP,
17 Debtor's Attorney, period: 7/13/2022 to 10/31/2022. (Doc #
18 1721, 1071, 1451, 1705, 1736, 1823, 2387, 2483)

19
20 HEARING re Hearing Using Zoom for Government RE: First
21 Interim Fee Application of Akin Gump Strauss Hauer & Feld
22 LLP as Special Litigation Counsel to the Debtors and Debtors
23 in Possession for Allowance of Compensation for
24 Services Rendered and Reimbursement of Expenses for the
25 Period July 13, 2022 Through and Including October

1 31 2022 for Akin Gump Strauss Hauer & Feld LLP, Special
2 Counsel, period: 7/13/2022 to 10/31/2022. (Doc. #
3 1707, 1072, 1407, 1668, 1736, 1823, 2387, 2483)

4
5 HEARING re Hearing Using Zoom for Government RE: First
6 Application for Interim Professional Compensation for
7 Centerview Partners LLC, Other Professional, period:
8 7/13/2022 to 10/31/2022. (Doc. # 1709, 1736, 1823, 2387,
9 2483)

10
11 HEARING re Hearing Using Zoom for Government RE: First
12 Application for Interim Professional Compensation for
13 Alvarez & Marsal North America, LLC, Other Professional,
14 period: 7/14/2022 to 10/31/2022. (Doc # 1710, 1001, 1419,
15 1688, 1736, 1823, 2387, 2483)

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17 HEARING re Hearing Using Zoom for Government RE: First
18 Interim Fee Application of White & Case LLP for Compensation
19 for Services Rendered and Reimbursement of Expenses as
20 Counsel to the Official Committee of Unsecured
21 Creditors for the Period of July 29, 2022 Through October
22 31, 2022. (Doc # 1715, 1224, 1450, 1635, 1736, 1823,
23 2387, 2483)

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1 HEARING re Hearing Using Zoom for Government RE: First
2 Interim Fee Application of M3 Advisory Partners, LP for
3 Compensation for Services Rendered and Reimbursement of
4 Expenses as Counsel to the Official Committee of
5 Unsecured Creditors for the Period of August 1, 2022 Through
6 October 31, 2022. (Doc # 1716, 1287, 1408, 1606,
7 1736, 1823, 2387)

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9 HEARING re HEARING re Hearing Using Zoom for Government RE:
10 First Interim Fee Application of Elementus Inc. for
11 Compensation for Services Rendered and Reimbursement of
12 Expenses as Blockchain Forensics Advisor to the Official
13 Committee of Unsecured Creditors for the Period of August 1,
14 2022 Through October 31, 2022. (Doc # 1718, 1274, 1275,
15 1374, 1736, 1823, 2387, 2483)

16
17 HEARING re Hearing Using Zoom for Government RE: First
18 Interim Fee Application of Perella Weinberg Partners LP for
19 Compensation for Services Rendered and Reimbursement of
20 Expenses as Counsel to the Official Committee of Unsecured
21 Creditors for the Period of August 2, 2022 Through October
22 31, 2022. (Doc # 1720, 1612, 1736, 1823, 2387, 2483)

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1 HEARING re Hearing Using Zoom for Government RE: First
2 Interim Fee Application of Huron Consulting Services LLC as
3 Financial Advisor to the Examiner for the Period from
4 October 10, 2022, Through and Including October 31,
5 2022 for Huron Consulting Services LLC, Other Professional,
6 period: 10/10/2022 to 10/31/2022. (Doc # 1719,
7 1685, 1717, 1740, 1736, 1823, 2387, 2483)

8
9 HEARING re Status Conference Using Zoom for Government RE:
10 Debtors' Motion for Entry of an Order (I) Approving the
11 Debtors' Key Employee Incentive Program and (II) Granting
12 Related Relief. (Doc ## 917, 997, 1003, 1114, 1130,
13 1132, 1133, 1140, 1139 to 1144, 1177, 1182, 1200, 1204,
14 1283, 1366, 1694, 1841, 1907, 2055, 2181, 2336, 2337,
15 2339, 2340, 2343, 2395, 2397, 2413, 2401, 2404, 2408 to
16 2411, 2430, 2481) Status Conference Going Forward on
17 4/18/2023 at 10 AM. Hearing will be held on 05/17/2023 at
18 10:00 am

19
20 HEARING re Status Conference RE: Application of Connor Nolan
21 Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4) for
22 Allowance and Payment of Professional Fees and Expenses
23 Incurred in Making a Substantial Contribution (ECF
24 Doc. # 2045, 2434, 2373, 2374, 2382, 2386, 2387, 2441)
25 Hearing RE: Motion Scheduled on 05/17/2023 at 10:00 am

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9 LEVI RACHMAN, PHX Financial, Pro Se Creditor

10 JASON IVENE, Pro Se Creditor

11 IMMANUEL HERRMANN, Pro Se Creditor

12 VICTOR UBIERNA de las Heras, Pro Se Creditor

13 JAMES TURPIN, Pro Se Creditor

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P R O C E E D I N G S

THE COURT: Thank you very much, and good morning to everybody. I have the amended agenda in front of me. We'll follow that. Mr. Kwasteniet, are you going to begin? I see you standing at a podium.

MR. KWASTENIET: Yes, I will. Good morning, Your Honor. Can you see and hear me okay?

THE COURT: I can. Thank you.

MR. KWASTENIET: Great. Thank you very much, Your Honor. Last night we filed at Docket 2490 a copy of a presentation that Mr. Ferraro our CEO would like to give the Court this morning to open our proceedings. So if it's okay with Your Honor, we request that my colleague Mr. Christopher Koenig be given access rights so he can present the presentation on the screen.

THE COURT: That's fine.

CLERK: Yes, (indiscernible).

THE COURT: Okay. It's on the screen. Thank you very much, Deanna. Okay, Mr. Kwasteniet. Are you going to introduce Mr. Ferraro to do this?

MR. KWASTENIET: Yes, I will, Your Honor. We -- I'm joined on the line today by the Debtor's CEO Mr. Christopher Ferraro. So Chris, if you can identify yourself and then maybe we'll go through this in a series of questions.

1 MR. FERRARO: Yeah, Chris Ferraro, Interim CEO
2 with the Debtor.

3 THE COURT: Good morning, Mr. Ferraro.

4 MR. FERRARO: Good morning, Your Honor.

5 MR. KWASTENIET: Great. Thank you. Mr. Ferraro,
6 can you please tell the Court about the current status of
7 the custody account withdrawal process?

8 MR. FERRARO: Yes. Thanks, Ross. Since February
9 15th when we started the KYC refresh process or custody
10 account withdrawal, 68 percent of the users by count has
11 successfully passed KYC. Measured in value, those users
12 represent almost 90 percent. Beginning March 2nd, eligible
13 users that finished the KYC process were allowed to begin
14 custody withdrawals. As of April 16th, we have completed
15 \$32 million of withdrawals or about 65 percent of the
16 distributable value with 17 million remaining to be
17 withdrawn.

18 As expected, we have seen customers with higher
19 balances withdraw first. Customers who have withdrawn have
20 a balance four times higher than those who have not. We
21 will continue to provide emails and (indiscernible)
22 messaging to remind eligible customers to start the KYC
23 process and withdraw from the platform. We've already sent
24 two reminder emails with another round of notifications
25 going out in the next week.

1 With respect to the remaining assets in the
2 custody accounts that were not part of the pure custody
3 tranche, on March 21st, the Court approved a settlement
4 among Celsius, the Custody Ad Hoc Group, and the UCC that
5 will return custody assets not currently eligible for
6 withdrawal to users that elect to participate in the
7 settlement. In addition, pursuant to the order approving
8 the settlement, Celsius is now authorized to return the
9 remaining six percent of each eligible user's distributable
10 custody assets that were originally held back in accordance
11 with the Court's previous order.

12 Celsius filed a revised distribution schedule
13 noting that change yesterday at Docket 2491. Custody
14 account users who opt into the settlement will receive 72.5
15 percent of their remaining assets in their custody accounts
16 that were not previously authorized for withdrawal less any
17 fees in two different payments. Eligible custody account
18 holders that would like to opt into the settlement are
19 required to submit an election form to (Indiscernible) no
20 later than April 24th at 5 p.m. Thus far, 37 percent of
21 eligible users have opted into the settlement representing
22 55 percent of the value. Now turning to the next slide.

23 MR. KWASTENIET: All right. Thanks, Mr. Ferraro.
24 Can you now provide the Court an update on the company's
25 mining operations?

1 MR. FERRARO: Yes. We ended March with 45,000
2 rigs deployed. Since my last update in early February, we
3 executed a new hosting agreement for 45 megawatts or over
4 13,000 machines. The rigs will be hosted in Hardin,
5 Montana, and we expect that all the rigs will be hashing by
6 early May. This is the second hosting deal that we have
7 signed since the Core Scientific rejection in early January,
8 and the two deals are for a total of 30,000 rigs.

9 For March, we had an adjusted EBITDA of 900,000
10 down nine percent from February. Quick reminder that the
11 EBITDA for this business is effectively the pre-tax income
12 adjusted down back to appreciation, and there's a good proxy
13 for cash flow from operations. The adjusted gross margin
14 was 16 percent in March down 14 percent from February driven
15 by volatile energy costs at proprietary sites, and the 12
16 percent higher network cash rate.

17 The up time, or the percentage of time our
18 machines are (indiscernible) declined to 59 percent due to
19 economic curtailment at our proprietary sites and
20 transformer outages at the Oklahoma City facility. The
21 average value of mined bit coin increased 7 percent from the
22 previous month to approximately 25,000 in March.

23 Moving to the next slide, which notes a longer
24 trend in the metrics I just discussed, most of the details
25 we just covered, but I did want to point out one item. On

1 the bottom left graph you see the 45,000 rigs deployed at
2 the end of March, which is a sizable increase to the 28,000
3 deployed immediately following, excuse me, the Core
4 Scientific rejection in early January. With the new hosting
5 agreements, we expect the rigs deployed to increase to
6 58,000 in May and expect 58,000 rigs deployed by the end of
7 June when our last proprietary site in Texas comes online.
8 So we're well on our way to mitigating the impact from the
9 37,000 rigs that were part of the core research.

10 MR. KWASTENIET: I think we can move onto the next

11 --

12 MR. FERRARO: Onto the next slide, please.

13 MR. KWASTENIET: -- to the next slide. Mr.

14 Ferraro, can you please provide the Court an update on the
15 company's current financial situation?

16 MR. FERRARO: Yeah. As a reminder, we started the
17 case with 138 million of cash, and we now have 166 million
18 on hand as of March month end, an increase of 28 million
19 since the petition date. That's all I have, Your Honor.
20 Sorry I'm losing my voice. I'm getting a little under the
21 weather. Thanks for your time today.

22 MR. KWASTENIET: Great. So unless (indiscernible)

23 --

24 THE COURT: Mr. Ferraro, let me ask you a
25 question. So, you know, the value of bitcoin has increased

1 substantially since the start of the case. I think it was
2 about 22,000 as I recall when the petition was filed. As of
3 today, it's a little over 30,000. How much of the increase
4 of liquidation is attributable to the increase in value of
5 bitcoin?

6 MR. FERRARO: Your Honor, not very much. You
7 know, we started the case with, you know, margins that were
8 a little bit healthier to where we are right now. We had
9 the EBITDA back then of a couple of million a month, and
10 right now it's at about a million a month. At the very low
11 point of bitcoin prices in December, you know, our EBITDA
12 was effectively zero-ish. So you can think of the rise in
13 bitcoin as having a favorable impact of about \$1 million a
14 month on our cashflows.

15 THE COURT: All right. Mr. Kwasteniet, do you
16 want to move on as -- let's move on with the agenda.

17 MR. KWASTENIET: That's great, Your Honor, but
18 before I get to the rest of the agenda, I just have one
19 other quick update. It'll just take a minute.

20 THE COURT: Sure.

21 MR. KWASTENIET: Your Honor, yesterday was the bid
22 deadline in the Debtor's Stalking Horse sale process, and I
23 wanted to inform Your Honor and the parties listening that
24 the Debtors received bids yesterday from three different
25 parties in addition to the Stalking Horse. So we have a

1 total of four bids that we are now considering. The Debtors
2 have shared these bids with the Committee, and we will be
3 evaluating the bids and deciding on next steps in the coming
4 days. So the Stalking Horse process is working as we
5 intended and hoped that it would in terms of generating
6 interest and competition.

7 Your Honor, importantly, these bids are
8 confidential, and it's important that the bids remain
9 confidential at this time while we are going through the
10 negotiation process. The Debtors have already had
11 conversations with the Committee and will continue to do so
12 about the right place and time and manner to disclose the
13 terms and details of the competing bids.

14 They will not be kept under wraps forever, but for
15 right now while we are negotiating with the parties, it's
16 obviously important that the parties' different bids and
17 positions be known to the Debtors and the Committee, but not
18 known to the other parties. So hence, the layer of
19 confidentiality that applies at this time. That's it in
20 terms of the general update, Your Honor, and we're now ready
21 to move into the agenda.

22 THE COURT: Let me ask a couple of questions that
23 arose from what you've just talked about. So you had
24 previously filed -- recently filed on the docket a statement
25 explaining the delay in filing a disclosure statement until

1 this bidding process is done in light of additional
2 interested parties. You've now said there are three
3 additional bids that have been made. What are you -- what
4 is the Debtor and the Committee contemplating? Is there
5 going to be a deadline to the bidders for best and final
6 bids? What's the process going forward?

7 MR. KWASTENIET: Yes, Your Honor. So with
8 receiving a very significant volume of materials over the
9 weekend and yesterday from the prospective bidders, we've
10 got a lot of work ahead of us over the next few days to
11 process through the bids, compare them, analyze them.
12 There's a bunch of people who are not on this call this
13 morning because they're focused on working through and
14 summarizing and analyzing the bids.

15 The bids, Your Honor, are not all exactly on fours
16 with each other. Some of the bids propose different
17 structures. So it's not clear yet that it's going to make
18 sense to do a traditional auction because, you know, you
19 have some bids that are one structure and others that are
20 another structure, and they don't really compete directly
21 against each other.

22 So but I do expect that as part of the process in
23 the coming days and, you know, probably later this week that
24 we'll be going back to all the parties to try to improve
25 their bids again in furtherance of our goal of making a

1 decision as soon as possible. Your Honor, we've extended
2 the deadline to file the disclosure statement to April the
3 28th. We're very much hoping to hit that deadline. There
4 is a possibility, of course, if we end up switching to a
5 different bid or materially change the path forward as a
6 result of the bidding process that we may need additional
7 time to finalize that.

8 But for all the creditors who are listening,
9 shareholders who are listening, all of whom are very
10 interested in as we are in an expeditious resolution of the
11 case, I can assure everybody that the time we're spending
12 right now is very much focused on making sure we have the
13 right -- the best bid to deliver the most value to
14 everybody.

15 So we've not yet decided, Your Honor, on whether
16 we're going to have an auction or further final -- last and
17 final deadline. If we do, I expect we'll file a subsequent
18 notice on the docket, but we're just -- we're working
19 through and still analyzing how best to proceed in light of
20 the different, you know, style of bids that we've received.

21 THE COURT: So let me raise another issue, and
22 that is certainly when you got my approval for the breakup
23 and expense reimbursement as revised, before I ruled on
24 that, I gave a deadline to the regulators, state and
25 federal, to advise what their views were. They all

1 obviously reserved all their rights, and I certainly fully
2 understand that. But regulatory compliance is really very
3 important. And to the extent that either the successful
4 bidder is different than the current one or the structure
5 changes, that could -- conceivably could have an impact on
6 the regulatory issues as well.

7 I do think it's important. I'm not ordering you
8 do at this point. I don't know what the structures are, who
9 the bidders are, etcetera, but I really do urge that
10 Debtors' counsel and Committee counsel, before you go live
11 with a selection of a successful bidder that you have
12 further discussions with the Office of the United States
13 Trustee and the federal and state securities regulators. It
14 would be unfortunate if we wind up with a surprise that you
15 select someone and then there's a whole new round of
16 objections because of the change in structure.

17 You know, I don't -- let me make clear. I'm not
18 expecting, if there is that discussion with the regulators,
19 that they're going to be bound by what their discussions
20 with you are, but I do think it's important. I just -- as
21 this goes forward, I want whatever the successful bid is,
22 structure and bidder, actually can move forward to
23 hopefully, you know, voting -- a disclosure statement,
24 voting, and a plan. So let me leave it at that. I just --
25 you know, the structure was known. The Stalking Horse was

1 known, and that may change for a very good reason. But let
2 me leave it at that.

3 MR. KWASTENIET: Thank you, Your Honor. We very
4 much agree with and appreciate your comments, and we've
5 spent a lot of time. These bids didn't just come in out of
6 the blue. We've had many diligence calls with the three
7 parties who submitted bids. Some more than others. Some
8 have been involved for longer than others, but certainly
9 regulatory compliance has been something we've spent a lot
10 of time on, and we --

11 THE COURT: You've cut out, Mr. Kwasteniet. I
12 can't hear you.

13 MR. KWASTENIET: Your Honor, can you hear me
14 again?

15 THE COURT: I can, yes. Go ahead.

16 MR. KWASTENIET: Okay. We got an alert that the
17 system had been muted, so I had to figure out how to unmute.

18 CLERK: I was trying to mute another party that
19 was speaking and Zoom jumped on me. My apologies.

20 MR. KWASTENIET: No problem. I'll take that as a
21 signal to wrap up my opening remarks.

22 THE COURT: Go ahead.

23 MR. KWASTENIET: Your Honor, we have been meeting
24 regularly, almost weekly, with the state and federal
25 regulators. I believe we have another update call later

1 today, so I can assure you and everybody listening that
2 we're going to be very mindful of any go-forward bid and how
3 it will work from a regulatory standpoint. That is first
4 and foremost in our minds and is one of the primary criteria
5 that we're using to evaluate.

6 I mean, certainly the value of a bid is important,
7 but the ability to get a bid executed is equally important.
8 And you know, that's something that we're very, very focused
9 on, Your Honor.

10 THE COURT: All right. Thank you very much. All
11 right. So let's move onto the agenda. First is the --

12 MR. KWASTENIET: Your Honor --

13 THE COURT: Go ahead.

14 MR. KWASTENIET: Yes. And I'm going to be
15 yielding the podium to my colleague Ms. Jones for the second
16 item on the agenda, which is the Stout retention. Your
17 Honor, after the Stout retention, I think it makes sense
18 with Your Honor's permission to maybe handle the fee
19 matters. It occurs to us that there's a great many
20 professionals on the line, virtually all of whom are billing
21 the estate who are on for the fee matters and who, if we
22 handle the fee -- took the fee issues out of order perhaps
23 after the Stout retention because Stout is also on the line
24 for their retention, and that's uncontested, maybe we pull
25 up the fee matters to then be able to free up and release

1 all the many advisors who are on for their fee hearings.

2 THE COURT: I'm in agreement. Go ahead. Let's
3 deal with Stout first. Go ahead, Ms. Jones.

4 MS. JONES: Good morning, Your Honor. Elizabeth
5 Jones with Kirkland and Ellis on behalf of the Debtors.
6 Your Honor, the next item on the agenda is the Debtor's
7 retention application seeking to employ Stout as the
8 valuation advisor, which was filed at Docket Number 2335.
9 In addition, Your Honor, Mr. Joel Cohen, the managing
10 director of Stout, is on the line. He provided a
11 declaration both in support of the original application and
12 a supplemental declaration filed at Docket Number 2460.

13 Your Honor, as explained both in the original
14 application and supplemental declaration, the Debtors are
15 seeking to retain Stout to provide specific valuation work
16 related to the Debtors' illiquid crypto and specifically in
17 connection with the valuation that will be provided in the
18 Debtors' disclosure statement. Given the unique nature of
19 the Debtors' assets, it was necessary to retain a specialist
20 that could handle that type of valuation work.

21 Your Honor, since we filed the application, we had
22 constructive conversations with both the Committee and the
23 U.S. Trustee, and we were able to respond to their questions
24 and resolve any of the concerns both by filing a revised
25 proposed order at Docket Number 2458, and as we further

1 explained in the supplemental declaration filed at Docket
2 Number 2460. Other than that, Your Honor, we received no
3 objections or other questions or informal comments. So
4 unless Your Honor has any questions, we respectfully request
5 entry of the revised proposed order filed at Docket Number
6 2458.

7 THE COURT: Thank you, Ms. Jones. Ms. Schwartz,
8 do you want to say anything on behalf of the U.S. Trustee?

9 MS. SCHWARTZ: Thank you, Your Honor. Andrea
10 Schwartz on behalf of the U.S. Trustee. Good morning,
11 Judge. I just want to say, Judge, that I'm pinch-hitting
12 today. Although Ms. Cornell my colleague, and I believe now
13 Mr. Masumoto are on the line, but Ms. Cornell has lost her
14 voice. So I'm coming in today, so I'm sure you'll give me
15 your indulgences.

16 But with respect to this retention application, we
17 don't have any objection. As counsel stated, they filed a
18 supplemental declaration. They took our comments to the
19 proposed form of order. My only regret is that I don't have
20 a podium and background like that because I feel somewhat
21 casual compared to my counsel. But we'll have to roll with
22 that for today. So we have no objection.

23 THE COURT: Okay. Thanks very much, Ms. Schwartz.
24 Anybody from the Committee want to speak?

25 MR. PESCE: No, Your Honor. Our -- this is

1 Gregory Pesce on behalf of the Committee. We've reviewed
2 the application and we don't have an objection either today.

3 THE COURT: Okay. All right. There are no
4 objections that have been filed, and I -- we've reviewed the
5 retention application. It's appropriate and it's approved,
6 okay? Thank you very much.

7 MS. SCHWARTZ: Thank you, Your Honor. With that,
8 I will cede the lectern over to Ms. Katherine Stadler as
9 counselor to the Fee Examiner.

10 MS. STADLER: Thank you. Good morning --

11 THE COURT: Ms. Stadler, good morning.

12 MS. STADLER: Good morning, Your Honor.

13 THE COURT: Go ahead.

14 MS. STADLER: Okay. We are happy to report that
15 the Fee Examiner has reached consensual resolution with 9 of
16 the 11 interim fee applicants. With the Court's permission,
17 the other three will be adjourned to allow us to continue
18 our discussions with those professionals and hopefully reach
19 consensual resolutions with them as well.

20 I want to note that the applications that are on
21 for hearing today are for the first interim fee period,
22 which ran from the petition date through the end of October
23 2022. The second interim fee period, November 2022 through
24 February of 2023, is not on the agenda for today. Those
25 applications were filed last week, and the fee examiner will

1 review and report on those consistent with the procedure
2 outlined in the interim compensation order and the fee
3 examiner order.

4 I have reviewed -- we have reviewed the Debtor's
5 UCC responses to the fee objections that are on the record.
6 I just wanted to note that for purposes of the Fee
7 Examiner's reporting, we will be addressing objections as we
8 report and recommend the application. In other words, the
9 Fee Examiner's recommendation with respect to objections
10 currently on file only relate to the nine applications that
11 are currently recommended for court approval. They do not
12 relate to any monthly fee application objections that may be
13 out there, or do they relate to any second interim fee
14 applications that may be out there.

15 We also note that the Fee Examiner did not receive
16 service of Mr. Hirschberg's most recent statement on fees.
17 I was able to get that after seeing it on the agenda from
18 Debtors' counsel. But I would simply ask that anyone filing
19 objections or comments related to fees please copy the Fee
20 Examiner counsel using the contact information in the
21 interim compensation order.

22 We do have one issue that Ms. Schwartz advised us
23 of just a little before the hearing. She reported that the
24 standard in New York is to continue withholding the 20
25 percent holdback of fees even after entry of an interim

1 compensation order. Ms. Schwartz, as she's pinch-hitting,
2 didn't have a chance to review the full record in the
3 Interim Compensation Order. So rather than have a
4 discussion about that on the record, we're going to wait,
5 submit, and upload the proposed order arising from today's
6 hearing until the U.S. Trustee is comfortable with the way
7 the Interim Compensation Order is worded. So her rights
8 with respect to that are reserved.

9 THE COURT: Let me just say that what Ms. Schwartz
10 advised you is correct. It is our practice in New York,
11 unless there's a specific order releasing part of a
12 holdback, is that the -- you know, the 20 percent holdback
13 continues on during the case. It's certainly in those
14 instances where I've either reduced it or eliminated it.
15 It's usually where a case is, for all practical purposes,
16 done, you know, where there are no objections, there is a
17 confirmed plan or something.

18 But it wouldn't in my view -- I'll certainly hear
19 argument about it if it comes to that, but it certainly
20 wouldn't be in a case of the stage where this case is. But
21 again, I'm -- I'll reserve ruling until actually hearing it,
22 but certainly that does remain an issue, and you can
23 continue your discussions with the U.S. Trustee, and we can
24 -- we don't need to have another -- if your position is that
25 you agree with what has been our practice here and are not

1 seeking to deviate from it, we don't have to have another
2 hearing to do that if, in fact, the issue is whether it'll
3 be reduced or waived as to what's approved. We'll have to
4 have another hearing, but --

5 MS. SCHWARTZ: Judge?

6 THE COURT: Yeah, go ahead, Ms. Schwartz.

7 MS. SCHWARTZ: Thank you, Your Honor. Andrea
8 Schwartz for the U.S. Trustee. I don't think you're going
9 to need another hearing. I'm fairly confident speaking with
10 Ms. Stadler and Judge Sontchi that we'll get it resolved.

11 THE COURT: Okay.

12 MS. SCHWARTZ: I believe that that standard
13 practice was in the first fee order, but there was a revised
14 fee order and somehow somebody missed it --

15 THE COURT: Okay.

16 MS. SCHWARTZ: -- you know, going forward. So I
17 don't think it's a problem then.

18 THE COURT: Okay.

19 MS. SCHWARTZ: Each of Ms. Stadler and Judge
20 Sontchi have been very gracious when I called them this
21 morning to advise them. So -- and the only other thing that
22 I'd say, Your Honor, with respect to all of the fee
23 applications is that the U.S. Trustee is just going to
24 reserve its rights until the finals to the extent we want to
25 file anything.

1 THE COURT: Sure. All right. Mr. Sontchi, do you
2 want to be heard? First let me say I appreciate -- I have
3 in front of me the Examiner's Summary Report, which is ECF
4 Docket 2387, and I appreciate all the work that's gone into
5 this in reviewing the fee applications. And I appreciate
6 the cooperation of all of the counsel who've submitted fee
7 applications in working out with the Examiner and his
8 counsel, you know, the issues that have come up.

9 You know, I said before the Fee Examiner was
10 appointed when the issue was presented and it was
11 consensually agreed by the parties, I made the comment that
12 I've never been a giant fan of fee examiners. In this case,
13 I am. The volume of fee applications which the Court has
14 reviewed but takes great comfort from the fact that there's
15 a fee examiner who was truly expert in all of this and is
16 able counsel in doing this. So I'm very appreciative. Mr.
17 Sontchi, do you want to be heard?

18 MR. SONTCHI: Well, Your Honor, I was taught very
19 early in my career that when things are going well, shut up.
20 And things couldn't be going better based on your comments.
21 No, I want to just thank Ms. Stadler's team and the
22 incredible amount of work they've done, very sophisticated
23 analysis. And all the lawyers, even the ones we haven't
24 agreed to go forward with today that we're still in
25 discussions with, they've been extremely cooperative.

1 The information flow has been excellent. We're
2 just still trying to work through some issues with two of
3 them, and then one of them came in so late we didn't have an
4 opportunity to actually get it done in time. But for the
5 second and the third, maybe who knows how many more, we will
6 be -- and we've told the parties this, we will be a little
7 tougher, well, maybe quite a bit tougher, on issues about
8 staffing now that the case has settled into more of a normal
9 rhythm.

10 We all know what it's like to file a case. We all
11 know how chaotic they are at the beginning. This one was a
12 particularly chaotic case. We've also asked them to track
13 on a fee basis interactions with pro se participants so we
14 can get a better idea of how much time is being spent
15 dealing with pro ses, who, as you know, are very active in
16 this case, which is perfectly fine, to make sure that the
17 resources that are being put to that are appropriate given
18 what's going on in the case.

19 But things have been going well. I've got a lot
20 of cooperation from the professionals, and I very much
21 appreciate it, and hopefully it'll be smooth going forward.
22 Thank you, Your Honor.

23 THE COURT: Thank you very much. Let me -- I just
24 want to make a couple of other comments, and really apropos
25 of what Mr. Sontchi just said. So this case is certainly

1 unusual from my experience by the number of pro ses who've
2 been actively involved in this case from the start. It --
3 you know, it's in part reflected by the fact that I'm
4 looking at the bottom of my Zoom screen and I see there are
5 261 participants who've logged onto Zoom today. Of course,
6 many of them may be counsel, but more are pro ses. And
7 we've had throughout this case, and I think it's extremely
8 important, that there be complete transparency about how
9 this case is progressing.

10 And so I assume that many of the 262 who are on
11 are, in fact, pro se litigants not only from the United
12 States, but from outside the United States as well. And so
13 this case, perhaps more than most others, there has been --
14 and I encouraged right at the outset that Debtors' counsel
15 and Committee's counsel be accessible to the pro ses. I
16 think many of the objections or filings of the pro ses made
17 have raised important issues. I've said that from time to
18 time.

19 And even when the result has been have an
20 objection overruled, I think that points that have been
21 raised have been very important and have been taken into
22 account by the Debtor and the Committee in some of the
23 relief they've sought or the form of the orders that have
24 been filed. So I would reiterate that. So yes, there has
25 been a lot of time of professionals taken up with

1 communicating with pro ses, but I do think that that is
2 important here.

3 Let me make one other comment about pro ses. So I
4 received this morning Mr. Frishberg's most recent objection
5 with respect to the Kirkland fees. The objection is
6 untimely, but the issues that it raise certainly have been
7 something that have been on my mind for some time, although
8 not articulated or raised. This is really the issue about
9 any fees incurred in connection with an effort to file a
10 late claim in the Voyager case.

11 As I think people are aware, Kirkland is counsel
12 for the Debtor in Voyager and is counsel for the Debtor in
13 Celsius. I won't explore -- I'm not sufficiently versed in
14 it to be able to address the issue concretely at this stage,
15 but it certainly raises issues about if a claim was not
16 timely filed on behalf of Celsius in the Voyager case, why
17 was that? And is it appropriate in those circumstances for
18 fees to be awarded in this case?

19 What I would say is, you know, Ms. Stadler and Mr.
20 Sontchi, it may be something that can't be fully resolved at
21 this time with respect to these fee applications for which
22 approval is sought. And I don't want to unnecessarily hold
23 up approval of Kirkland's fees or other's fees if the
24 conclusion -- if there's a recommendation that there be an
25 adjustment to Kirkland's fees. That adjustment, as far as

1 I'm concerned, can be reserved and made in the next
2 application that is reviewed.

3 So again, it's -- I will wait. I think, Ms.
4 Stadler, you and Mr. Sontchi should review the issue, if not
5 necessarily the late-filed objection because I think it is a
6 serious issue. And again, it doesn't -- in my view, does
7 not need to hold up the approval of the Kirkland fees. To
8 the extent there's an adjustment, it can be made when the
9 next fee applications are up for consideration. I don't
10 know, Ms. Stadler or Mr. Sontchi, is that satisfactory to
11 the two of you?

12 MR. SONTCHI: It is, Your Honor. And we will
13 definitely look at that in the context of the next round of
14 interim fee applications. And I think since I'm 99 percent
15 sure based on your comments and Ms. Schwartz's comments that
16 we're going to allow -- or not allow, but that the 20
17 percent holdback is going to remain in place, that we don't
18 need to worry about reducing the fee application allowed
19 about under this interim order for Kirkland at this point.

20 That I think can be dealt with the next time.
21 Because if money is going to be withheld because of this
22 issue in Voyager, I cannot imagine it would rise above the
23 level of 20 percent --

24 THE COURT: Right.

25 MR. SONTCHI: -- of the approximately \$18 million

1 in allowed fees from the (indiscernible).

2 THE COURT: I'm fine with it. Look, there's a lot
3 of work that's being done. The work has been, in my view,
4 well done in everything I've seen. This is a separate issue
5 really, and I'll await any recommendation from you as the
6 Fee Examiner and your counsel. And obviously, I'm sure
7 you'll have discussions with Kirkland as necessary in
8 dealing with it, okay?

9 MR. SONTCHI: We will, Your Honor.

10 MS. SCHWARTZ: Judge, Andrea Schwartz. Just --

11 THE COURT: Go ahead.

12 MS. SCHWARTZ: -- one thing I just want to mention
13 that we're aware of that issue as well. And similarly, with
14 respect to all fees, we'll reserve until all of the interim
15 fees are up for final.

16 THE COURT: That's fine. Let me be clear. While
17 -- you know, in my time on the bench, there have only been a
18 handful of instances where, yeah, all issues are reserved
19 for the final. So the fact that interim fees are approved
20 does not mean issues can't be raised in the final. There've
21 only been a handful of times when the Court has concluded
22 that further adjustments are required at the time of the
23 final fee hearing. So that's not now, okay? But the point
24 is well-taken, Ms. Schwartz. All right. Let me see. Is
25 there anybody else? Mr. Pesce, you want to be heard?

1 MR. PESCE: Yes, Your Honor. On behalf of the
2 Committee, just two quick points. We wanted to thank the
3 Fee Examiner for working with us on our application, and you
4 know, the consensual reduction we negotiated. We're going
5 to reserve on the characterization that the U.S. Trustee
6 made regarding the two fee orders. We disagree with that,
7 and we can follow up with the U.S. Trustee and the Fee
8 Examiner regarding the alleged change that she referenced.
9 And we can come back to the Court if need be after that.

10 But I did want to thank Mr. Sontchi for his
11 efforts to work with us over the last few months and his
12 counsel's efforts over the last few months to work on this
13 issue.

14 THE COURT: You know, it doesn't look like you're
15 in Singapore at the moment, Mr. Sontchi.

16 MR. SONTCHI: I'm not. For once. My trip was
17 canceled at the last minute. I just -- I will say, and I
18 didn't -- I don't want to get into it, Ms. Schwartz, at all
19 because this happened last minute --

20 THE COURT: Let's -- Mr. Sontchi, let's leave this
21 --

22 MR. SONTCHI: Okay.

23 THE COURT: -- let's leave this issue. I'm
24 satisfied with where the record is at this point. Let me
25 see whether anybody else wants to be heard. I'm -- again, I

1 expressed my reservations about fee examiners. I may change
2 my view about it, but --

3 MR. SONTCHI: Okay. Like I said, time to shut up.

4 THE COURT: Okay. Mr. Frishberg, very briefly,
5 but your -- the most recent objection is untimely. Go
6 ahead, Mr. Frishberg.

7 MR. FRISHBERG: I'm sorry about it being untimely.
8 I have no issue with it being reviewed in the final interim
9 fee applications, and I also reserve on the rights. Thank
10 you very much.

11 THE COURT: Okay. Thank you. Anybody else wish
12 to be heard? All right. There were some other objections,
13 and I would give anybody else who filed an objection -- Mr.
14 Ubierna De Las Heras filed an objection, but I'm prepared to
15 rule now. I think it's -- and I think -- Ms. Stadler, I
16 think because I think you said that there was an agreement
17 with counsel as to which fee applications are being -- are
18 not going to be approved at this point, are being held back,
19 could you just indicate specifically so our record's clear
20 as to which ones those are, so I don't have to go through
21 each individual one?

22 MS. STADLER: Yes, Your Honor. They are listed on
23 Exhibit B to our report. It's the Ernst and Young first
24 interim fee application Docket Number 2170. That was filed
25 very late, so that's the one Mr. Sontchi referred to as we

1 haven't had time to finish our analysis yet. The other two
2 are Latham and Watkins, Special Counsel to the Debtor,
3 Docket Number 1712, and Jenner and Block and Shoba Pillay,
4 the examiner and her counsel, Docket Number 1717.
5 Discussions with those two latter parties are continuing.

6 THE COURT: All right. And I guess what I would
7 say on that score, if you finished your discussions with
8 them and there's a proposed resolution, don't wait for the
9 next (b) hearing --

10 MS. STADLER: Yes.

11 THE COURT: -- to bring that on. You can -- I
12 would permit you to do it on presentment. If there are
13 objections, obviously we'll have to have a hearing, but I'll
14 review carefully what it is that you report with respect to
15 those. But you can -- I'll permit you to notice it on
16 presentment. And you know, if there are objections, we'll
17 set a quick hearing on it and deal with that, okay? I don't
18 want to unnecessarily hold up their professionals and their
19 fees, okay?

20 MS. STADLER: Yes. Thank you for that
21 instruction. We will do so.

22 THE COURT: All right. So if there anybody else
23 who wishes to be heard with respect to the fees that are on
24 for approval today, interim approval today? All right. I
25 must say I think it -- it's been rare over the years when I

1 haven't had issues that I've raised. One of the points that
2 I've always made is when -- for example, when the U.S.
3 Trustee has negotiated adjustments in an application, I
4 never want to be in the position of sort of DD'ing an
5 applicant because there may be issues that I had and where I
6 view the adjustments that have been made based on either the
7 U.S. Trustee's work or, here, the work of the Fee Examiner
8 and his counsel.

9 I will report myself as satisfied. So each of the
10 applications that are on for interim approval is approved.
11 Submit -- work out the exact terms of the order, submit the
12 order, and it will be entered. I'm sure all the counsel
13 will be happy about that. Okay? Thank you very much. And
14 certainly, any of the counsel who are here running their
15 clock because they're here for the -- their fee
16 applications, you're excused unless you want to stay on your
17 own nickel.

18 MR. SONTCHI: Thank you, Your Honor. Good-bye.

19 MS. SCHWARTZ: Thank you.

20 THE COURT: Thanks very much. All right, Mr.
21 Kwasteniet. I don't know where -- who's going to pick up?
22 Ms. Jones, are you picking up again, or --

23 MS. JONES: Yes.

24 THE COURT: Okay.

25 MS. JONES: Good morning again, Your Honor.

1 Elizabeth Jones of Kirkland and Ellis on behalf of the
2 Debtors. We will go ahead and back into order on the agenda
3 and move forward with Agenda Item Number 3, the motion to
4 approve the withhold settlement, which was filed at Docket
5 Number 2334.

6 Your Honor, as we've noted on our March 8 omnibus
7 hearing, we had reached an agreement in principle with the
8 withhold Ad Hoc Group and the Committee, and we're very
9 pleased to be here today in front of you with a full and
10 consensual motion and no objections filed on the docket.
11 Since March 8, Your Honor, we have worked hard in
12 documenting that settlement agreement, and signing and
13 executing, which is also attached to the motion at Docket
14 2334.

15 Your Honor, as further explained in the motion and
16 the papers, the settlement agreement resolves the current
17 pending litigation between these three parties, both with
18 respect to the Ad Hoc Group's list day motion that was filed
19 back in September at I believe Docket Number 737. I may
20 have may have misstated that, but also the pending
21 litigation with respect to Phase 1 and 2 that was previously
22 settled with the Custody Ad Hoc Group.

23 Your Honor, pursuant to the settlement, we are
24 settling claims and causes of action related to withhold
25 assets held by the members of the Withhold Ad Hoc Group. In

1 exchange for those settling of claims, we have agreed that
2 the Debtors will pay those members after entry of the
3 settlement order 15 percent of the value of their claim as
4 of the petition date, and the remaining 85 percent will be
5 recharacterized as an earned claim. So going forward and in
6 connection with the plan, they'll be voting an earn claim,
7 not a withhold claim.

8 Your Honor, after seven months of pending
9 litigation with the parties, we believe that this settlement
10 meets the requirements of Bankruptcy Rule 9019 that it is
11 reasonable and in the Debtor's best interest and business
12 judgment to enter into that, and that it provides a
13 consensual good resolution for all parties involved. So
14 Your Honor, unless you have any questions, we respectfully
15 request entry of that. And I'm also happy to explain some
16 of the other differences and similarities with respect to
17 the custody settlement if that's also helpful.

18 THE COURT: Let me ask a couple of questions, and
19 other counsel may want to address them. There were no
20 objections filed to the approval of the settlement, but I
21 have a couple of questions. So if I'm correct, there was no
22 true withhold wallets, and the coins for the settlement will
23 be coming out of the general aggregate wallets, which is
24 potentially to the detriment of earn Creditors. Why do you
25 -- is that correct? And do you believe the settlement is

1 fair and reasonable given that it averts coins from the
2 general earn Creditors to a smaller group of Creditors?

3 MS. JONES: Yes, Your Honor. First, with respect
4 to your first question, that's correct. It's coming from
5 the aggregator wallets. And with respect to your second
6 question, we do believe that it is fair and equitable given
7 that the Court has found that the assets tell that, on
8 behalf of earned customers, are property of the estate,
9 which means the costs and expenses to continue litigating
10 these issues with the withhold Claimants would also come out
11 of that amount.

12 Here we believe, given the size of the Withhold Ad
13 Hoc Group, which is about 1.3 million in withhold assets,
14 that paying the 15 percent of that value is significantly
15 less than the cost that would be associated with litigation.
16 So it is going to benefit all parties.

17 THE COURT: Okay. The other question I have is
18 what's the total estimated recovery for withhold Creditors
19 and how that compares to the recovery for the settling
20 custody holders and the general earn Creditors. For custody
21 holders, I think they were getting 72.5 or they were
22 potentially getting 72.5 percent recovery, which made it
23 easier for me to compare numbers. Let me stop there.

24 MS. JONES: Yes. That's correct. And I will
25 note, Your Honor, that the earn recovery is still -- given

1 our valuation work and disclosure statement still subject to
2 change. But I will say when we were negotiating the
3 settlement, the -- this 15 percent and 85 percent breakdown
4 puts the withholder recovery right in the middle of earn
5 Creditors and custody. So I would say if earn is projecting
6 around a 50 percent recovery or so, and custody is at 72 and
7 a half, this puts the withhold group around the 60 percent
8 mark.

9 And again, given where we stand in litigation and
10 that there was still no decision yet as to whether withhold
11 is or is not property of the estate, we thought that
12 appropriate and reasonable settlement would be in between
13 those two amounts.

14 THE COURT: All right. Thank you. Ms. Kovsky, do
15 you want to be heard on this?

16 MS. KOVSKY: Thank you, Your Honor. Deb Kovsky
17 for the Ad Hoc Group of Withhold Account Holders. First I
18 wanted to thank the Debtors and the Committee for working
19 with us to get to a consensual resolution. As Ms. Jones
20 said, we believe that this is a reasonable sort of split-
21 the-baby resolution for our claims in addition to stopping
22 the bleeding of the litigation costs.

23 I also wanted to point out, and I know that Your
24 Honor and I had had words about this at our last hearing on
25 this matter back in December, but the withhold account

1 holders do believe that they had a constructive trust claim
2 with respect to a general earn asset or the general property
3 of the estate that we certainly would have pursued. So in
4 light of our claims, the cost of litigation, and the small
5 size of the Creditor group, we do believe that this is an
6 appropriate outcome and is fully consensual.

7 THE COURT: I didn't ask Ms. Jones as I'll ask
8 you, either one of you can answer it. So how does the
9 election process work with respect to this proposed
10 settlement?

11 MS. JONES: The --

12 MS. KOVSKY: I'm sorry, Ms. Jones. Go ahead.

13 MS. JONES: Thank you, Your Honor. Again,
14 Elizabeth Jones of Kirkland and Ellis on behalf of the
15 Debtors. So Your Honor, the election process is something
16 that we thought very long and hard here, and considered a
17 lot of different factors to determine what we thought would
18 be the most fair and equitable result for all holders of
19 withhold claims or all holders of withhold assets.

20 And in this scenario, we are offering the
21 settlement only to members of the Withhold Ad Hoc group.
22 They have already signed the agreement. Unlike custody,
23 there won't be a proposed settlement election process, but
24 there will be the opportunity for all the full payments to
25 have the same settlement in connection with the plan if the

1 class carries the plan. The reason again for that is at the
2 time we entered into the settlement, the period that we were
3 thinking of for solicitation and in connection with the plan
4 disclosure statement, the 30-day election period likely
5 would have overlapped, which would have created very
6 confusing and potentially harmful results for those trying
7 to vote and understand what classes of plans they were going
8 to be classified.

9 We also wanted to make sure that everybody had the
10 opportunity to receive this settlement, but without it
11 creating a number of other problems, which is why we
12 ultimately thought this would be the best resolution. And
13 again, given that the only parties right now that have an
14 open claim dispute the Debtors is the Withhold Ad Hoc Group
15 because there has not yet been a determination as to whose
16 property withhold assets belong to.

17 THE COURT: How many are in the Ad Hoc Group
18 Withhold --

19 MS. JONES: Thirteen.

20 THE COURT: I'm sorry? Say it again.

21 MS. JONES: Thirteen.

22 THE COURT: Thank you very much. Okay. All
23 right. Mr. Hermann, you want to be heard?

24 MR. HERMANN: Sure, Your Honor. Immanuel
25 Herrmann, pro se Creditor. I think the settlement's fair

1 and reasonable. I support it. You know, there's a lot of
2 ambiguous situations and contractual ambiguity in this case.
3 I think the settlement's needed. I think, you know, other
4 similar settlements may be needed down the road to deal with
5 some of the complexity of this case. And I think it would
6 cost Creditors a lot more to actually -- you know, we have
7 13 people here. I think it would cost Creditors a lot more
8 to actually -- and even if it goes to all the withhold
9 people, I just think that it's -- we should end the
10 bleeding, and I support it.

11 THE COURT: Thank you, Mr. Hermann. Does anybody
12 else wish to be heard? All right.

13 MS. AMULIC: Yes, Your Honor.

14 THE COURT: Oh, I'm sorry.

15 MS. AMULIC: Sorry.

16 THE COURT: Go ahead.

17 MS. AMULIC: Andrea Amulic from White and Case for
18 the Committee. Just really briefly --

19 THE COURT: Yeah, please.

20 MS. AMULIC: -- wanted to express our support for
21 the settlement, and we agree with Ms. Jones and Ms. Kovsky's
22 statements as to the cost savings and the benefits of the
23 settlement relative to what would ultimately be a really
24 time consuming and resource heavy process in terms of
25 proceeding with phase two. So we are vigorously in support.

1 THE COURT: Thank you very much. So I'm ready
2 rule, and yes, I'm approving the settlement. So but just
3 briefly to give the reasons, so this is a 9019 motion. You
4 know, settlements are favored in bankruptcy, in fact
5 encouraged. The Court has to determine whether the
6 settlement is fair and equitable and in the best interest of
7 the estate. As is typical, I apply the seven non-exclusive
8 factors set forth by the Second Circuit in its decision in
9 In re Iridium Operating, LLC, 478 F.3d 452. It's a 2007
10 decision.

11 Since there are no objections filed, I will not go
12 through each of those seven factors. They're not all
13 applicable in the circumstances, but I've considered the
14 factors to the extent that they're applicable. And I have
15 concluded that this settlement is fair, reasonable, and
16 appropriate. It forgoes what would be complicated and
17 expensive litigation, both for the Ad Hoc Committee members
18 and for the Debtor. And so I think that this is a -- you
19 know, is a perfectly appropriate and reasonable settlement,
20 and I'm pleased to approve it.

21 So provide me the order in Word format, and it
22 will be entered. Thank you very much. And I really do
23 appreciate the efforts of the Debtor, the Committee, Ms.
24 Kovsky on behalf of the Ad Hoc Committee. And you know, I'm
25 glad you were able to read a consensual result. You know, I

1 think, as usual, the best settlements don't make anyone
2 entirely happy, but that's the nature of the process. So
3 all right. Thank you. Let's move on, on the agenda then.

4 MS. AMULIC: Thank you very much, Your Honor.
5 With that I --

6 MS. KOVSKY: Thank you, Your Honor.

7 MS. AMULIC: Oh, apologies. I will cede the
8 podium to my colleague Ms. Patricia Loureiro.

9 THE COURT: Okay.

10 MS. LOUREIRO: Good morning, Your Honor. For the
11 record, Patricia Loureiro from Kirkland and Ellis on behalf
12 of the Debtors. Up next on the agenda is another settlement
13 motion. This approving a settlement we reached with a
14 former employee of the Debtors. Before we get into the
15 substance, I'd like to introduce into evidence the
16 declaration of Mr. Christopher Ferraro, the interim
17 (indiscernible) --

18 THE COURT: May I ask are you -- you don't have a
19 camera? You're just on the phone?

20 MS. LOUREIRO: I'm on a camera with the video.

21 THE COURT: Oh, okay. I'm seeing a box around a
22 different one. Now I can see you. Go ahead. Please go
23 ahead. I'm sorry. You want to introduce the declaration of
24 Mr. Ferraro, which is what ECF 2416?

25 MS. LOUREIRO: That's correct, Your Honor. And

1 Mr. Ferraro is here on Zoom and available to testify to the
2 extent any party wishes to cross-examine him.

3 THE COURT: Are there any objections to the Court
4 admitting in evidence the Ferraro declaration, which is ECF
5 Docket Number 2416? Hearing no objection, it's admitted
6 into evidence. Go ahead.

7 MS. LOUREIRO: Thank you, Your Honor. As a bit of
8 background, on June 1, 2022, six weeks ahead of the petition
9 date, Ms. Wohlman was separated from her employer Debtor
10 Celsius Network Limited, which was formed under the laws of
11 England and Wales. Historically, the Debtors provided
12 severance benefits to employees in the event of a
13 termination that is not for cause.

14 As a condition to receiving severance benefits,
15 the Debtors required that employees execute a separation
16 agreement releasing any claims held against the company.
17 Ms. Wohlman was offered a separation agreement, but did not
18 sign the agreement. As a result, the Debtors did not seek
19 authority to pay Ms. Wohlman any severance benefits in the
20 wages motion filed on the petition date. Ms. Wohlman filed
21 a limited objection to the wages motion seeking payment of
22 severance she believed she was entitled to, and the Court
23 overruled this objection.

24 Ms. Wohlman then filed a claim in the U.K.
25 Employment Tribunal alleging claims including that Celsius

1 discriminated against her because of her alleged disability.
2 The Debtors asked that the tribunal recognize the authority
3 of this court and the global nature of the automatic stay.
4 The tribunal indicated that additional briefing was required
5 to understand whether it was appropriate to apply the
6 automatic stay absent a formal recognition proceeding in the
7 U.K. The tribunal then proceeded to schedule further
8 hearing dates, including evidentiary hearing set for this
9 July.

10 In light of this, the Debtors sought to settle
11 with Ms. Wohlman, and the results of these negotiations are
12 embodied in the settlement agreement attached as Exhibit 1
13 to the proposed order. The settlement agreement
14 contemplates an 85,000 pound payment to be paid to Ms.
15 Wohlman in exchange for the withdrawal and release of her
16 claim. The settlement agreement was presented to and
17 approved by a conciliator appointed by the U.K. Employment
18 Tribunal, and also reflects comments from counsel to the
19 Committee who support entry into the settlement agreement.

20 The Debtors believe the settlement is the most
21 cost-effective path forward that also happens to provide the
22 greatest amount of certainties. Given the expected cost of
23 defending against these claims range from 100,000 pounds to
24 350,000 pounds, as well as the risk and uncertainty
25 associated with fully litigating this claim, the Debtors, in

1 an exercise of their business judgment, believe that the
2 settlement is fair and equitable and in the best interest of
3 the estate. Your Honor, with that background, I'm happy to
4 answer any questions you may have.

5 THE COURT: I don't have any questions. Does
6 anybody else want to be heard? Okay. As I say, there were
7 no objections that were filed. So the Motion to Approve the
8 Wohlman Settlement is ECF Docket Number 2331. Attached to
9 the motion as Exhibit A is a proposed order. And the
10 deadline for objections was April 11th. As I say, no
11 objections were filed. Mr. Ferraro's declaration, ECF 2416,
12 addresses this as well. The Court is approving the
13 settlement.

14 I've considered the usual factors. You know, I've
15 described the In re Iridium Operating seven non-specific
16 factors. There's a long line of cases in this district and
17 in this circuit with regard to the standards for approving
18 settlements. What's clear to me is if this actually had to
19 be litigated, it would be very expensive to the estate to do
20 that. I think that the proposed settlement amount is fair
21 and reasonable in the best interest of the Debtor's estate.

22 Consequently, the Court will enter an order --
23 enter the order approving the settlement. Thank you very
24 much.

25 MS. LOUREIRO: Thank you, Your Honor. At this

1 time we'll cede the podium. I think that the Committee is
2 next on the agenda.

3 THE COURT: Yep.

4 MR. COLODNY: Good afternoon, Your Honor. Aaron
5 Colodny from White and Case on behalf of the Official
6 Committee of Unsecured Creditors. Can you hear me okay?

7 THE COURT: I can. Go ahead, Mr. Colodny.

8 MR. COLODNY: Thank you, Your Honor. We are here
9 to present our motion to file a class claim on behalf of
10 account holders. Or alternatively, to have an independent
11 fiduciary bring a class claim on behalf of account holders.

12 I think I'll begin by saying there's no question
13 here that there is serious claims by account holders for
14 pervasive fraud, misrepresentation, deceptive practices, and
15 material omissions by the Debtors. That was acknowledged by
16 the Court in its ruling on the claim objections. It's in
17 the examiner's report, and I don't believe any party,
18 including the Debtors or the preferred equity holders,
19 contest those allegations exist.

20 The issue brought by our motion is how those
21 claims should be pursued. Should they be pursued in an ad
22 hoc fashion by pro se creditors without the resources to
23 properly bring those actions, that's what the preferred
24 equity holders would advocate. Or should they be pursued in
25 an organized collective approach that gives account holders

1 a fair fight and allow these cases to proceed in an
2 efficient manner? That's the approach the Committee's
3 advocating.

4 Our approach is informed by Your Honor's comments
5 at the last hearing that the claims process needs to be a
6 fair fight. It's also informed by a personal experience
7 pursuing the Debtor's initial path, which was the Bellwether
8 claims objection process, and the difficulty of wading
9 through the various issues, even to get close to a
10 litigation scheduling order in those matters. In light of
11 those facts, we sought your authority to file a class claim
12 on behalf of all account holders.

13 At the top, I want to address a comment made in
14 Ms. Cornell's statement filed yesterday that we brought this
15 in haste. That's absolutely not true. We carefully
16 considered the facts, the circumstances, and the options.
17 We requested that the Debtors schedule non-contract claims
18 and mark them as disputed so that we could then seek an
19 estimation for purposes of confirmation.

20 When that was denied, we sought to inform our
21 constituents of your ruling and the amended bar date through
22 both posting on our website and Twitter town halls to make
23 sure everyone knew about the amended bar date deadline and
24 what was coming. And at the end of the day after careful
25 consideration, we determined to request your permission to

1 bring the class claim.

2 That decision is supported by the facts uncovered
3 in the examiner's report in our own investigation. Those
4 facts demonstrate that Celsius fundamentally misrepresented
5 its business to account holders and failed to inform its
6 account holders of significant risk that the company took
7 and suffered. Those misrepresentations and omissions
8 pervaded CNL's entire advertising and messaging strategy.
9 They were part of its sales pitch to account holders to
10 convince them to transfer their savings to Celsius, and they
11 went to the heart of their business.

12 Now, those claims aren't before Your Honor today.
13 The claim is not on file. Rather, we're requesting
14 permission to file that claim as is required by the
15 bankruptcy code. And I understand that the examiner's
16 report is not admissible evidence, but what it is, is a 476-
17 page report that was provided by -- that was prepared by an
18 experienced and independent investigator, which demonstrates
19 the basis and the factual underpinnings of our claim.

20 A claim is like a complaint, and if permitted by
21 this court, we will establish through admissible evidence
22 that that claim is true. But in light of the Series B in
23 Ms. Cornell's comments that we proceeded in haste and did
24 not specify our claims, I want to spend a bit of time to go
25 a bit backwards and highlight some of the key themes that

1 pervaded CNL in Mr. Mashinsky's marketing. Mr. Mashinsky --

2 MS. SCHWARTZ: Your Honor? Excuse me, counsel.

3 Your Honor?

4 THE COURT: I'm sorry, Ms. Schwartz. He's -- yes?

5 MS. SCHWARTZ: No, I was just going to say it

6 might be helpful -- just suggesting it might be helpful if

7 we could just clarify that because --

8 THE COURT: No, let's let Mr. Colodny --

9 MS. SCHWARTZ: Okay. No problem. No problem.

10 THE COURT: -- proceed with his argument. Go

11 ahead, Mr. Colodny.

12 MR. COLODNY: Thank you, Your Honor. Find where I

13 left off. So Mr. Mashinsky and CNL's misrepresentations

14 started from day one when it announced that the ICO was

15 fully funded and that it sold \$50 million of cell token.

16 That was not true. From that point forward, as I said

17 before, those misrepresentations pervaded Celsius'

18 marketing. It was part of their sales pitch.

19 And I'd like to touch on a couple of those, which

20 are not exclusive, but I think demonstrate what we are

21 trying to accomplish here. First, Mr. Mashinsky repeatedly

22 told people that Celsius was safer than a bank, but that

23 wasn't -- that general statement was not it. He repeatedly

24 told customers that Celsius passed 80 percent of its

25 revenues back to those customers. That was not true. And

1 how do we know it wasn't true?

2 Well, first, as the examiner found, there's no
3 evidence that Celsius at any point in time set its rewards
4 rates based on its revenue. That's on Page 249 of the
5 report. CNL also admitted as much. Indeed, when the U.K.
6 regulators pointed that passing along profits made Celsius
7 an unlicensed investment scheme, CNL quickly back pedaled
8 and said that the rates as offered to customers were not
9 tied to its profits.

10 Unlike account holders, the U.K. regulars didn't
11 buy it. And instead of fixing the problem, the company fled
12 to the United States, but it did not stop repeating that
13 message to customers. It also fundamentally misrepresented
14 the risk it was undertaking with account holders' assets.
15 CNL and Mr. Mashinsky repeatedly told account holders it did
16 not issue uncollateralized loans. Mr. Mashinsky made those
17 statements in 2019, 2020, 2021, and as late as April 2022.
18 Those are documented on Page 244 to 246 of the examiner's
19 report.

20 Again, they were lies. Celsius had billions of
21 dollars of uncollateralized loans. All customers thought
22 Celsius was only investing in collateralized secured loans
23 from reputable financial institutions. In fact, Mr.
24 Mashinsky repeatedly said these are Wall Street
25 institutions. That also was not true.

1 And how did account holders know that? Because
2 CNL told them over and over and over again. Mr. Mashinsky
3 was constantly promoting Celsius, and it wasn't just on the
4 AMAs. It was at conferences, it was on public new
5 broadcasts. One of the instances of the collateralized
6 loans where Mr. Mashinsky specifically makes the point that
7 there are no uncollateralized loans was on CNBC.

8 And I want to take a second to talk about the
9 Bellwether Claimants. Now, I spent a lot of time with the
10 Bellwether Claimants over the past couple of weeks, and I
11 want to focus on Ms. Gallagher. You know, she watched an
12 interview of Mr. Mashinsky that was broadcast on a program
13 called Real Vision on April 18, 2021. That video she found
14 on CNL's website, and this was before the migration
15 happened.

16 In that video, Mr. Mashinsky states that Celsius
17 does not issue uncollateralized loans. He also states that
18 it passes 80 percent of its gross revenues back to account
19 holders. He made those statements to induce people like Ms.
20 Gallagher to deposit their crypto with Celsius. And in
21 fact, Ms. Gallagher transferred substantially all of her
22 life savings to Celsius.

23 Now, after that, Ms. Gallagher would watch each of
24 Mr. Mashinsky's MNAs, a majority of which she would watch
25 live. And that's important because we now know that

1 Celsius, starting in 2021, was editing the AMAs after they
2 were broadcast live. One email I was looking at last night
3 from Celsius' chief risk officer to its chief regulatory
4 officer referred to this as a censorship process. Ms.
5 Gallagher had no reason to know that what Mr. Mashinsky was
6 telling her live was not in fact true because Celsius didn't
7 tell her. Instead, they edited the videos.

8 Now, I keep returning to the examiner's opening
9 line in his report, which I think really succinctly sums
10 this up. The business model that Celsius advertised and
11 sold to its customers was not the business that Celsius
12 actually operated. And since the beginning of these cases,
13 I've spoken to many Creditors.

14 I answer, try to answer, all of the emails I get.
15 I try to pick up all the phone calls I get, and oftentimes
16 they don't agree with our strategy. They don't agree with
17 what we're doing, but the one thing they all agree on is
18 that they were lied to. And I don't believe that anyone
19 disputes that fact. Even the Debtors now.

20 Now to return to the matter that's before the
21 Court, whether the Committee on behalf of a lead Plaintiff
22 or a fiduciary should be able to file a class claim. As
23 this Court stated in the MF Global opinion, that
24 determination turns primarily on whether it will affect the
25 administration of the place. Here, I don't believe there's

1 a question that it will aid the administration. As
2 confirmed by the Bellwether process, there can be little
3 argument that pro se Plaintiffs proceeding with protracted
4 discovery is not conducive to the efficient administration
5 of this estate, nor should other Claimants be bound by
6 litigation against unrepresented parties.

7 The Court asked that this litigation be a fair
8 fight, and our proposed process will provide that.
9 Moreover, the Committee's conducted its own investigation,
10 and we're prepared to move quickly here right alongside
11 confirmation.

12 Now, the preferred equity holders argue that class
13 certification will impose additional complexity, but that
14 complexity is far outweighed by the burden that prosecuting
15 thousands of individual fraud claims than non-contract
16 claims would impose on the Debtors' estates. That's exactly
17 why the Debtors began with the Bellwether claim process.
18 And if the Debtors are not correct that all claims for
19 fraud, misrepresentation, any other tort are limited to the
20 value of the crypto on the platform, that's going to be an
21 inevitability.

22 Now, the preferred equity holders also seem to say
23 that we could never certify a class and prove reliance on a
24 wide scale. We disagree. More importantly, it's not before
25 the Court this time. And even if we can't prove common

1 reliance, we intend to bring statutory claims on behalf of
2 Celsius as misleading advertising and deceptive business
3 practices that do not require a Plaintiff to prove that
4 element.

5 Now, the second factor, which I don't think is
6 that instructive here, is whether a class was certified pre-
7 petition. I found this argument by the preferred equity
8 holders to be particularly astonishing to say that customers
9 that were defrauded should've known to raise those claims
10 before that fraud was uncovered. I just don't think that
11 factor should be considered here.

12 The third factor, the bar date, I think it speaks
13 in favor of allowing the class claim. As raised in our
14 reply, we looked at the Certificate of Service, and it does
15 not provide that the bar date was served on all account
16 holders. I spoke with the Debtors last night. I understand
17 it should've been served on all account holders, and they
18 were confirming it. As of now, I don't know.

19 But the one thing that's been very clear from my
20 conversations with account holders is that the 30 days for a
21 pro se Creditor to put together and synthesize the
22 examiner's report and file a -- what in essence would be a
23 complaint on account of these actions is a tall task for
24 anyone to accomplish.

25 And I want to point out that if the class -- if

1 Your Honor is -- permits us to move forward and we are able
2 to file a claim, I think that we would -- or I know that we
3 would request that the bar date be tolled so that thousands
4 of Creditors are not required to file proofs of claims,
5 protected proofs of claim, by the April 28th amended bar
6 date.

7 Now, I want to get to my last point, which is the
8 preferred equity holders and remarkably United States
9 Trustee's argument that we are somehow violating our
10 fiduciary duties by filing the motion. In Residential
11 Capital, Your Honor found that the very nature of a
12 Creditor's Committee is to represent varying creditor
13 constituencies with divergent and sometimes even opposing
14 interests. And each member is charged with a fiduciary duty
15 to serve the interests of Creditors generally. A committee
16 must guide its actions so as to safeguard as much as
17 possible the minority as well as the majority. Very true.

18 But that does not mean that every time there is a
19 conflict between unsecured Creditors the Committee must sit
20 idly by. In ResCap, Your Honor cited the Circle K Corp.
21 case, which is 199 B.R. 92, where Jude Bernstein explicitly
22 noted that the Committee and its counsel often take
23 positions against particular Creditors. For instance,
24 Committee may object to a Creditor's claim. It also may
25 obtain STN standing to sue third parties, which can include

1 Creditors. And it may also seek to equitably subordinate
2 the claims of Creditors.

3 If the Committee couldn't act if there was a
4 conflict between one particular creditor or a small group,
5 it would never be able to take positions adverse to other
6 creditors in these cases, which we've done. I will admit
7 that. We have taken positions adverse to the withhold
8 group. We have filed the claims in every box and litigated
9 that issue. These claims were not raised in either of those
10 actions.

11 And I would submit that the hallmark of a well-
12 functioning committee has the ability to take positions on
13 tough issues, which potentially have consequences for
14 everyone. It's a bankruptcy case. When you take a piece of
15 the pie away from one creditor, it goes to another, and it
16 is to the detriment of that other creditor necessarily.

17 Here, at the request of the United States Trustee,
18 the Court appointed an independent examiner to investigate
19 the Debtors. We used the facts uncovered by that
20 independent examiner to take a reasonable position that is
21 entirely consistent with our fiduciary duties. And although
22 that report is in evidence, it represents a thorough and
23 independent recitation of the facts.

24 I don't believe that the existence of unsecured
25 creditors and the mere fact that unsecured creditors exist

1 at CNL prevents us from taking an action to remedy the
2 collective action problem that we face and witness
3 firsthand. And I think that our fiduciary duties, in fact,
4 compel that to ensure an equitable recovery for all
5 Creditors.

6 However, to the extent the Court has an issue with
7 that, we requested the alternative relief for an independent
8 fiduciary to be appointed to bring the claim on behalf of
9 all account holders. The point here is we think a
10 collective process is the best way to go. You know, given
11 our investigation, the process we've made on the claim thus
12 far, we believe that it would be a waste of estate resources
13 for another set of professionals to come in, and it would
14 lead to unnecessarily delay. But the paramount concern
15 here, as the Court said, is administrative efficiency in
16 providing a collective process to vindicate the account
17 holders' rights.

18 And finally, to respond to (Indiscernible)'s
19 comments and put it explicitly on the record, this is no way
20 meant to affect the voting process on a plan in any way,
21 shape, or form. We are willing to stipulate to whatever
22 relief to make it clear that account holders will get to
23 vote on this plan, and this will not be the Committee
24 allowing a billion dollar claim so that it can vote its
25 preferred plan through. That decision is going to be for

1 account holders, and that will be done according to a
2 disclosure statement in solicitation procedures that are
3 approved by this Court. Unless Your Honor has any
4 questions, I'll pass the podium to Mr. Leblanc. I think
5 you're on mute, Your Honor.

6 THE COURT: I absolutely was on mute. And the
7 words I say more often in a hearing is unmute, unmute.
8 Okay. Let me ask you this hypothetical. Assume that the
9 Court grants the Committee leave to file a class claim and
10 you bring on a motion for class certification. And let's
11 assume that I don't require independent fiduciaries to be
12 appointed to do that. What is the timeline that you
13 anticipate going forward assuming that, for example, the
14 preferred holders strenuously oppose the relief that you'd
15 be seeking? What's the timeline?

16 MR. COLODNY: So I think we can get our proof of
17 claim on file by the bar date or shortly thereafter. And I
18 believe we're prepared to move forward with the motion for
19 class certification in the first or second week of May. I
20 think it would be shortly thereafter putting it on file.
21 Again, we're not looking to delay anything. And I think
22 that the litigation schedule with respect to that class
23 certification motion can proceed in line with confirmation.

24 I know there's been some disputes about the
25 litigation schedule between Mr. Leblanc and his clients and

1 our clients and the Debtors. However, I believe that all
2 can proceed together. You know, that would be based off of
3 what amount of discovery is required with respect to that
4 class certification motion obviously.

5 THE COURT: All right. Just bear with me another
6 moment, okay? So I just -- I do want to briefly address the
7 issue not yet resolved despite the fact that I've given
8 plenty of time to do that is for the Committee and the
9 Series B holders to resolve to see whether they can come to
10 an agreement about a schedule with respect to procedures for
11 estimating the intercompany claims with the Debtor. Have
12 you been able to resolve that issue? The schedule.

13 MR. COLODNY: We have not, Your Honor.

14 THE COURT: All right.

15 MR. LEBLANC: Your Honor, this is Andrew Leblanc.
16 I'm happy to speak to that whenever is appropriate, Your
17 Honor. I know the Debtors moved that to an adjourned --

18 THE COURT: Yeah, but here's -- we'll get to the
19 -- you know, here's what I'm going to do. My patience is
20 running out. I think that I always -- my strong preference
21 is for counsel to agree on a reasonable schedule that
22 invariably I approve. But again, my patience is running
23 out, and so I think, as I understand it, there was -- you
24 have until the 20th, two days from now, to agree on a
25 schedule.

1 And I'm just telling you, if you don't, I'm
2 imposing a schedule. You may not -- neither of you may like
3 it. One of you may like it. I don't know. Would you
4 please resolve this? I mean, you're not that far apart on
5 schedule. I can't believe you haven't resolved it. We
6 don't need to talk about it anymore. You've got until the
7 20th to work it out, okay?

8 MR. LEBLANC: Your Honor, can I just speak to that
9 topic just briefly, Your Honor? And the -- we've proposed a
10 schedule. Both sides filed a motion to deal with one issue
11 estimation. The Committee in their reply brief on Saturday
12 added two additional issues that haven't even been --

13 THE COURT: Mr. Leblanc, Mr. Leblanc, I don't want
14 to hear anymore about this. I'm just telling you you've got
15 until the 20th to work it out. If you don't agree on a
16 schedule, I'm imposing a schedule. It's as simple as that.
17 There's no reason to take up time today talking about it
18 further. I just want to get that message across. It's time
19 for you to work it out. If you can't, I will just -- we
20 won't have another hearing about it. I'll just impose a
21 schedule, okay?

22 I think if the Court hadn't already agreed to give
23 you all until the 20th to try to do that, I would just use
24 my frustration today and just enter an order. So I'm not
25 going to do that. I'm giving you another couple of days to

1 do it, okay? So Mr. Leblanc, go ahead and address the issue
2 of the -- whether to permit the Committee to file a class
3 claim.

4 MR. LEBLANC: I don't know if Your Honor wanted to
5 hear from anyone else who's supportive of it, or you wanted
6 me to just go now.

7 THE COURT: I want you to go now.

8 MR. LEBLANC: Okay. Your Honor, we've said, and
9 you and I talked about this at the -- with the -- whether
10 there were claims at every entity, that if there are fraud
11 claims, those can be dealt with, and they can be dealt with.
12 No one has suggested, including the Debtors or the
13 Committee, how many people believe they have fraud claims
14 against CNL. And I think it's critical to be clear about
15 this.

16 And when Your Honor and I talked about this at the
17 last hearing, I made the point that many people never even
18 dealt with CNL at any point in time. Alex Mashinsky was the
19 CEO of Celsius LLC at every point in time through its
20 existence.

21 THE COURT: And do you -- was he also the CEO of
22 CNL?

23 MR. LEBLANC: He was, Your Honor.

24 THE COURT: Okay. And you think that any
25 communication have to have -- he's talking with out of both

1 sides of his mouth?

2 MR. LEBLANC: Your Honor, I believe that for
3 somebody to establish that they relied on his capacity as --
4 where -- and I think you have to draw the distinction
5 between people who were post-migration and pre-migration.
6 For a party who came into the Celsius network joining only
7 as a Creditor of Celsius LLC, the statements made by Mr.
8 Mashinsky, for them to say that they were relying on him in
9 his capacity as --

10 THE COURT: Oh, I'm sure, Mr. Leblanc, you'd be
11 very happy for the amended bar date to run and very few earn
12 Creditors having actually filed a proof of claim. What the
13 Committee -- I think this goes to Mr. Colodny's point, I
14 don't think it's necessary to -- because what I understand
15 the law on class actions, if they -- if I permit them to
16 file a class claim and it's not certified, the putative
17 members of that class will be given an opportunity to --
18 will be advised that that's what's happened and will be
19 given a further opportunity to file amended claims.

20 So I'm sure your constituency would be very happy
21 if no more than a handful of amended claims were filed.
22 That's not going to happen today, okay? I'm just telling
23 you that right now.

24 MR. LEBLANC: Your Honor, we don't know how many
25 claims have even been filed today. It's not as though the

1 Committee's coming here -- and MF Global, Your Honor, was a
2 case where liability was conceded as to the issue. And the
3 only issue for the class was how many vacation days did each
4 of the 250 or so members of the class have. This is a very,
5 very different situation. The Committee described it in
6 their reply brief as -- and I'll quote it here -- somewhat
7 novel. Your Honor, this is wholly unprecedented.

8 We didn't see this. We represented the Committee
9 in Enron, Refco, Lehman. This isn't the process that was
10 used. In none of those cases did a Creditor's Committee or
11 we on behalf of the Creditor's Committee bring a class proof
12 of claim on behalf of Creditors in those instances. We
13 didn't -- it's not appropriate, and I'll leave Ms. Schwartz
14 to the argument that they've made. We don't think it's
15 appropriate, Your Honor, and it's just not what happens, and
16 with good reason.

17 The Committee isn't even a member of the class
18 that could bring a Rule 23 class action. We also do
19 believe, Your Honor, it is inconsistent with their fiduciary
20 duties. It's why creditors' committees don't file proofs of
21 claim on behalf of individual Creditors, what they're
22 proposing to do here. Your Honor, it should be left to --
23 we'll see how many customers, in fact, believe that they
24 were defrauded when they filed proofs of claim, and we'll
25 deal with those claims.

1 The notion that the Committee would file on behalf
2 of 600,000 customers, some of whom may never have seen any
3 of those videos, may never even -- don't -- may not even
4 speak the English language and say that they were all relied
5 upon, that they all relied upon these statements, I don't
6 know how, Your Honor, that could happen consistent with Rule
7 11, and I don't know how that could be part of a certified
8 class.

9 When I've seen this process, Your Honor, and I've
10 seen it -- it's sparsely granted. I think everyone
11 acknowledges that. It's scarce that you have class proofs
12 of claim. When I've seen it, what the movant has done is
13 they filed the motion seeking authority under 9014 to apply
14 Rule 23, and they've included their proof of claim or their
15 complaint that would allege that. And that's been true of
16 cases that have had classes certified pre-petition or not --
17 or file pre-petition, and those that have not.

18 Here, and in large part I think because it did
19 start, we had four days to respond to what is an
20 unbelievably complex issue. And I think that's part of the
21 concern that we have had. I think this is being rushed to
22 try -- and the Committee was clear in the Tweet that they
23 Tweeted about this, the reason they're doing this is because
24 they're dissatisfied with Your Honor's decision on where
25 claims sit. And this is just another mechanism that they've

1 now devised to try to deny the preferred equity any
2 recovery.

3 We do not believe that this brings any measure of
4 efficiency to the process, Your Honor. This litigation just
5 over the class issues likely to run long past confirmation,
6 and that doesn't even get to the question of liability and
7 damages. We don't even know what the Debtors' position on
8 the underlying merits of it are going to be. Are the
9 Debtors -- and in particular, is the CNL estate and their
10 directors, are they going to concede that they're liable to
11 all customers for fraud?

12 THE COURT: Well, they took the position that they
13 were liable, the customers. The Committee and the Debtor
14 both believed that all of the entities were liable on
15 customer claims. You prevailed, they didn't, but their
16 position was that CNL was liable on customer claims.

17 MR. LEBLANC: They took the position, Your Honor,
18 that they were liable on customer claims contractually. And
19 you're right. They were wrong on that. I don't know what
20 position the Debtors are going to take. I don't know if the
21 Debtors are a Defendant defending this, or if this is going
22 to again be left to the preferred equity holders to defend
23 CNL from this liability.

24 THE COURT: I'm sure you'll do a very able job,
25 Mr. Leblanc.

1 MR. LEBLANC: Your Honor, we'll do our best, but
2 to put this additional burden into the system with the other
3 issues that Your Honor doesn't want to talk about with
4 respect to the schedule, it just doesn't -- there's no
5 prospect that this is going to bring efficiency to the
6 process as opposed to just inflating the number of claims
7 that have to be dealt with, rather than just dealing with
8 the claims that have been filed.

9 And it is not as though this Committee has been
10 silent or been sitting on their hands. The Committee -- and
11 we note this in our papers, Your Honor, the Committee has
12 been actively encouraging parties to file fraud claims
13 showing them how to do it. They have FAQs that they've put
14 out on social media showing people how to file fraud claims.
15 We should see what the fruits of that was. How many people
16 actually believe that they have fraud claims --

17 THE COURT: I had that argument. Move on.

18 MR. LEBLANC: Your Honor, we do think that Your
19 Honor should be considering the other elements of Rule 23
20 and considering whether to approve it under 9014. Obviously
21 the full class certification analysis will only come when
22 Your Honor -- when a motion is made for class certification
23 and the complaint is actually filed. But for the reasons
24 discussed in our papers, Your Honor, I think none of these
25 issues are amenable to class certification and we shouldn't

1 belabor this point anymore.

2 It is an inefficient process that has never --
3 it's not somewhat novel, has never been used in the way that
4 it's proposed to be used here, and it shouldn't be used in
5 this way in this instance. Your Honor, unless you have any
6 other questions, I'll pause there.

7 THE COURT: Thank you, Mr. Leblanc. Ms. Schwartz,
8 I cut you off earlier. Do you want to be heard?

9 MS. SCHWARTZ: Yes, Your Honor. And I apologize
10 because it appeared to me that Mr. Colodny might have read
11 our papers to be critical of him. That really wasn't the
12 intent. And so before he went down a whole colloquy about
13 it, I thought --

14 THE COURT: Let me just say what my reading, that
15 the U.S. Trustee argued that the motion seeks relief, that
16 it isn't consistent with the Committee's fiduciary duty to
17 all Creditors because it focuses only on one subsection,
18 even if that subsection is a majority or large proportion of
19 the committee. The U.S. Trustee believes that there are
20 constituents of the Committee that would not benefit from
21 the filing of the class action. So I'm not relying on Mr.
22 Colodny's reading --

23 MS. SCHWARTZ: Okay.

24 THE COURT: -- of the response.

25 MS. SCHWARTZ: Then let me address that.

1 THE COURT: I'm relying on my own --

2 MS. SCHWARTZ: Right.

3 THE COURT: -- my own reading of it

4 MS. SCHWARTZ: Yeah. No, no, no, but what I --

5 all I wanted to say about that, Your Honor, which I thought
6 would be helpful, is that where we said that it was filed in
7 haste, the point was that there was only two weeks, and it
8 was a very serious motion that was being filed. Because
9 there's no question that the Creditors' Committee has a
10 fiduciary duty that runs to every single one of its
11 constituents.

12 It doesn't look like I'm impressing you with that
13 argument, Judge, but what I'm trying to get across here is
14 that we understand. And I think Mr. Colodny made a very
15 compelling argument with regard to the difficulties of a
16 body of Creditors that are largely, if not entirely, pro se.
17 I completely understand that, and I completely understand
18 the need for efficiency and the ability to have a good
19 process. There's no question about that. Our problem --

20 THE COURT: But the amended -- the --

21 MS. SCHWARTZ: -- really --

22 THE COURT: Excuse me. The amended bar date, as I
23 understand it, is April 28, 2023.

24 MS. SCHWARTZ: Right.

25 THE COURT: And you would -- you know, Mr. Leblanc

1 will love it if that bar date sticks and only a small number
2 of pro se Creditors actually file amended proofs of claim.
3 That's not going to happen, okay?

4 MS. SCHWARTZ: Okay. But Your Honor, what I --

5 THE COURT: Let me make it crystal clear.

6 MS. SCHWARTZ: Right, but what -- I understand
7 that, Your Honor. I got that, but the one thing that I
8 think that what we said to Your Honor was that it's really
9 not the place for the Creditor's Committee to file this
10 claim. They proposed an alternate process. They say, oh,
11 where it's going to be taking -- it's going to take too much
12 time, etcetera, it's a cost to the estate.

13 It may be a cost to the estate, but clearly where
14 the cost is outweighed by the structure and integrity of the
15 system which uses an unsecured Creditors' Committee to
16 represent all constituents, that the better approach would
17 be to have their independent person be able to do it.
18 Because if in fact, Your Honor, they do file their motion
19 for class certification, and let's say Your Honor actually
20 grants the class certification, who's going to be counsel to
21 the class? Is then counsel to the Creditors' Committee also
22 going to be counsel to a class of the constituents?

23 THE COURT: Let me ask you, Ms. Schwartz. The
24 Committee argued forcefully, was unsuccessful, but argued
25 forcefully that all of the earn assets were property of the

1 estate. And a fairly -- you know, a sizeable number of pro
2 se Creditors opposed that position. They said it's mine,
3 not the Debtors'. Did Committee counsel violate a fiduciary
4 duty of the Debtor when it took the position that it
5 believed was the correct position? That actually on this
6 they were successful, that it was property of the estate?

7 MS. SCHWARTZ: No, I --

8 THE COURT: There were plenty of people who argued
9 the other side, but it --

10 MS. SCHWARTZ: I hear what you're saying, Judge.

11 THE COURT: No, wait. Stop. Does it happen all
12 the time? No, but I've had lots of cases where the
13 committee in a case takes a position that's contrary to the
14 position of some of the people who are their constituency.
15 I mean, that happens all the time.

16 MS. SCHWARTZ: That's right.

17 THE COURT: And the position of the U.S. Trustee
18 is, no, they can't do that. Well, of course they can.

19 MS. SCHWARTZ: I don't think it's that broad, Your
20 Honor. I wouldn't say that that's what we're arguing. What
21 we're saying here is that what they're proposing here is
22 something that, as Mr. Leblanc mentioned, has never before
23 been done. They want to file a -- they're actually taking a
24 formal class within the entire constituency. It's not clear
25 from the motion, and I think that's part of the reason why

1 we said that it was filed in haste.

2 It's not clear what conflicts can arise between
3 the -- who the Creditors are in the various creditor holder
4 groups that they have. And also, Your Honor, that an
5 unsecured Creditors Committee, also in the process when the
6 United States Trustee appoints the members of the Committee,
7 it is a fundamental principle that the Creditors Committee
8 has a fiduciary duty to all of the constituents. And that
9 to spend its effort to represent one group --

10 THE COURT: (Indiscernible) right back. No, wait
11 a second now. The Committee took the position that all of
12 the earn assets were property of the estate. That was not
13 the position of all the Creditors. Are you saying they did
14 something wrong when they took the position --

15 MS. SCHWARTZ: No. No.

16 THE COURT: -- that the earn assets were property
17 of the estate? That's exactly a similar circumstance. Not
18 everybody agreed with it. It wasn't because simply the
19 Committee advocated for a position that the Court ruled the
20 way it did. I evaluated all the arguments, including the
21 pro se arguments, and some were represented by counsel.

22 MS. SCHWARTZ: Then I'm not clear. Then I'm not
23 being clear, Judge.

24 THE COURT: Look, I've heard the argument. I
25 understand --

1 MS. SCHWARTZ: But I didn't get --

2 THE COURT: I read the paper that your office
3 filed.

4 MS. SCHWARTZ: Okay. Fair enough. But Judge, you
5 know, I would just close by saying that we are -- I
6 definitely understand the dynamics. I understand that
7 you've allowed certain things in other cases. I think that
8 this would be a poor precedent on a go-forward basis to
9 permit Creditor Committee counsel to be representing in a
10 separate process. And also, I would like an answer to the
11 question would the Creditors Committee then, if the class
12 was certified, be counsel to the class as well as the
13 Creditors Committee?

14 THE COURT: Well, we'll have to wait until there's
15 a class certification hearing if I grant the motion before
16 me, and the U.S. Trustee can take the position that it
17 wants. And it may be that Creditors Committee counsel will
18 come up with a solution that, you know, satisfies everyone
19 but Mr. Leblanc --

20 MS. SCHWARTZ: Well, that --

21 THE COURT: No.

22 MS. SCHWARTZ: -- well, we might -- but --

23 THE COURT: But you know --

24 MS. SCHWARTZ: -- Your Honor, the better --

25 THE COURT: -- I heard -- stop. Andrea, I'm done.

1 Stop. I've heard enough. I don't want to hear anymore,
2 okay? There are a number of hands raised. Let me hear --
3 Mr. Koenig, do you want to be heard on behalf of the Debtor?

4 MR. KOENIG: Good morning, Your Honor. Chris
5 Koenig, Kirkland and Ellis for the Debtor. Thank you. I'll
6 be brief. We didn't file a pleading in support of or
7 opposing --

8 MS. SCHWARTZ: Did you see the judge wave his
9 hands to shut me up?

10 MR. KOENIG: -- the motion. We believe that --

11 MS. SCHWARTZ: That was bad. (Indiscernible) --

12 THE COURT: Andrea, mute your line, please. I
13 could hear that. You're talking. You're muted now. I
14 don't appreciate the comment you made about shutting you up,
15 okay? It was completely inappropriate. Mr. Koenig, go
16 ahead.

17 MR. KOENIG: Thank you, Your Honor. While we
18 don't have a position, of course the Committee hasn't filed
19 a proof of claim or a class claim motion. We'll have to
20 review what is filed. We do believe that the process that
21 the Committee is proposing is very reasonable and frankly
22 will aid efficiency. As Your Honor knows, we've been
23 struggling with the issue of how to deal with the claims
24 that have been filed. We filed Bellwether objections and
25 we've talked about at prior hearings how we were trying to

1 use that process to advance resolution of claims in this
2 matter.

3 What we've done is we've pushed pause on the
4 Bellwether claims process in light of what the Committee is
5 suggesting, we've done that because we do believe that this
6 is going to be a much more efficient process than having to
7 deal with 23,000 claims on an individual basis. The
8 Committee can deal with claims that are common to all
9 account holders. That should aid the resolution process.

10 But you know, I find it very astonishing, frankly,
11 that Mr. Leblanc is actually arguing that there's, I wrote
12 it down, no measure of efficiency here. This is certainly
13 going to be far more efficient than what the alternative is,
14 which is for each and every individual Creditor to have to
15 receive an amended bar date notice, decide whether they have
16 a claim to be filed, and file claims.

17 I note that the Debtors have 600,000 account
18 holders approximately. Only 23,000 claims were filed prior
19 to the original bar date. That's about three percent. And
20 so you know, certainly we -- you know, Creditors are advised
21 of their rights and are receiving mailings and emails and,
22 you know, hopefully are filing what they need to file. But
23 in this case in particular when you have so many pro se
24 Creditors who are similar situated to one another, it would
25 be unfair to expect each and every one of them to file a

1 claim by an amended bar date on 35 days' notice.

2 We believe that this process is far more efficient
3 and is likely to lead to, as Mr. Colodny said, a fair fight
4 on the merits between the Committee, the Series B, and we'll
5 see what position the Debtors take after the Committee file
6 their papers. But we believe that there is significant
7 efficiency, as Mr. Colodny said, compared to the Bellwether
8 claims objection process, which was what we devised when
9 there were individual Creditors. But given now that the
10 Committee is going to be advancing a common argument on
11 behalf of all Creditors, we think that that will be far more
12 efficient. So --

13 THE COURT: Thank you.

14 MR. KOENIG: -- I'll pause my remarks there.
15 Thank you, Your Honor.

16 THE COURT: Thank you, Mr. Colodny. All right. I
17 have all these arguments down on this. I've spent a lot of
18 time on this motion. I don't need to hear anybody else.
19 I'm approving the motion, granting the Committee leave to
20 file a class claim. This does not resolve the issue of
21 whether the class is going to be certified or whether there
22 are -- well, we'll see how that does.

23 Let me give a brief statement of reasons. I'm not
24 going to write an opinion on it as I don't want to slow the
25 process down. Some of these issues will be dealt with when

1 I rule on any motion for class certification. But class
2 actions in bankruptcy, certainly in contested matters,
3 they're at the discretion of the bankruptcy court, and I
4 apply Rule 9014. Bankruptcy Rule 9014 applies only to
5 contested matters, but authorizes the bankruptcy court on
6 motions to direct that one or more of the rules of Part 7,
7 which includes 702.3 shall apply.

8 While most courts agree that class proofs of claim
9 are allowed in bankruptcy proceeding, the right is not
10 absolute. I've written on this issue before in MF Global
11 and in other cases as well. And although the exercise of
12 discretion is necessarily case-in-fact specific, bankruptcy
13 courts generally consider three factors in determining
14 whether to apply Rule 23 to claims process.

15 One, whether the class was certified pre-petition.
16 Here it's not, but pre-petition -- the alleged facts
17 establishing fraud were not known. Whether the putative
18 class members received notice of the bar date, well, there's
19 an amended bar date, but it's totally unrealistic to expect
20 that 600,000 or even a fraction of those people will file an
21 amended proof of claim.

22 While the focus of Mr. Leblanc and others has been
23 on a fraud claim where reliance may or may not be required
24 under these circumstances, there may well be statutory
25 claims that don't include the same reliance requirement.

1 When I wrote the opinion on against which entity claims
2 would reside, I made clear that that was only a ruling with
3 respect to the contract claims. And so there may be both
4 common law claims and statutory claims, so I don't know the
5 full range of claims that may be asserted in a class proof
6 of claim.

7 And the third factor is -- the second factor was
8 about notice of the bar -- amended bar date. I talked about
9 that, and whether class certification would adversely affect
10 administration of the estate. Those are the three factors
11 that I will refer to as the Music Land factors, 362 B.R. at
12 pages 654 and 655. I won't go through a separate discussion
13 at each of the Musicland factors, but I've certainly
14 considered it with respect to this pending motion.

15 Here, it seems that equitable considerations weigh
16 strongly in favor of granting this motion. In considering a
17 request for class proofs of claim filed by creditors, the
18 Court of Appeals in the Fourth Circuit held that Bankruptcy
19 Rule 7023 is an equitable manner to give effect to the
20 purposes of the Bankruptcy Act. See Gentry v. Siegel, 668
21 F.3d 83, 89 (4th Cir. 2012). I consider these equitable
22 considerations to be highly relevant here.

23 A minority of the 600,000 putative class members
24 are represented by counsel, and none of them have had enough
25 time to review the customer claims opinion or research

1 theories. And the Committee has appealed from the customer
2 claims opinion, as it certainly could.

3 A significant portion of the claimants do not have
4 and have not ever lived in the United States and are
5 completely unfamiliar with the American legal system.
6 Indeed, the pro se creditors who have filed papers on this
7 motion are highly supportive of the Committee's motion to
8 proceed to class or by any other collective process
9 available.

10 Denying the motion is likely to result in only the
11 sophisticated and representative claimants submitting their
12 claims prior to the amended bar date to the detriment of the
13 great majority of creditors. That outcome goes against the
14 fundamental tenet of bankruptcy, which is a fair and
15 equitable distribution of assets to creditors.

16 I've certainly taken seriously the Series B
17 preferred holders' objection. It's premature. They will no
18 doubt litigate strenuously whether the class should be
19 certified and the Court will deal with that when it arises.

20 Mr. Colodny, submit the order in Word format and
21 it will be entered. Let's move on on the agenda.

22 MR. COLODNY: Thank you, Your Honor.

23 MR. KOENIG: Thank you, Your Honor. I'm going to
24 cede the lectern to Mr. Kwasteniet, who will handle the
25 balance of the agenda. We're at the status conference

1 section of the agenda this morning.

2 THE COURT: Okay. Go ahead, Mr. Kwasteniet.

3 MR. KWASTENIET: Ross Kwasteniet again from
4 Kirkland & Ellis on behalf of the Debtors. I believe that
5 brings us to Item 16 on the agenda.

6 Your Honor, we previously filed at Docket 2336
7 Debtor's motion to approve a key employee incentive plan.
8 Your Honor, we requested adjournment of that motion as we
9 are continuing to engage in active discussions with counsel
10 to the committee as well as the U.S. Trustee's Office about
11 the design, the metrics, who should be included in that
12 program. We are hopeful that with additional time, we'll be
13 able to resolve or narrow objections to the proposed KEIP.
14 And that has been adjourned to our May omnibus hearing, Your
15 Honor.

16 THE COURT: All right.

17 MR. KWASTENIET: Your Honor, the next items on the
18 agenda are related, and I am aware that Your Honor has
19 adjourned those to a future hearing date. They include a
20 request from an individual employee for reimbursement of
21 legal fees as well as the Debtor's motion for approval of
22 procedures pursuant to which the Debtors may pay legal fees
23 for employees current and former who cooperate in the
24 various ongoing investigations.

25 As I understand it, Your Honor, you had asked for

1 a status conference today, so I'm happy to answer any
2 questions, hear any remarks you have, or say anything that
3 you would like me to in connection with either of those.
4 And I believe also counsel for the individual employee, Mr.
5 Nolan, is on the line and should be available to address
6 that application for reimbursement, Your Honor.

7 THE COURT: No, my comment would be this. And
8 I'll certainly give Mr. Nolan's counsel an opportunity to
9 address it. So there was on the docket for today the
10 application of Connor Nolan pursuant to 11 U.S. Code §
11 503(b)(3)(D) and 503(b)(4) for allowance and payment of
12 professional fees. His application is at ECF Docket 2045.

13 There also has been I think adjourned several
14 times is the Debtor's motion for approval of fees. I don't
15 have the exact docket number, but it's for -- with
16 cooperation agreements, reimbursement of fees. And I
17 thought they could be handled together. I mean, Mr. Nolan
18 is certainly entitled to have his motion heard. But the
19 issues really are very much the same in the Court's view.
20 And that's why I adjourned Mr. Nolan's application as well.

21 You know, Mr. Colodny, let me ask, does the
22 Committee -- where are these discussions going? And then
23 I'll ask Ms. Schwartz as well if she wants to address the
24 issue. I'm not deciding it today. This is really a status
25 conference. Go ahead, Mr. Colodny.

1 MR. COLODNY: Yes, Your Honor. What the Debtors
2 proposed was a procedures motion to provide for a framework
3 through which we could both determine whether employees'
4 cooperation and the reimbursement of their expenses is for
5 the benefit of the estate. And what Mr. Kwasteniet made
6 clear in the motion and we've been discussing since then is
7 that no expenses would be paid without both the Debtor and
8 the Committee consent and full disclosure.

9 We've been working I think cooperatively with Mr.
10 Kwasteniet to reach an agreement and also been working
11 cooperatively with the United States Trustee.

12 I sent revised forms of order over the weekend
13 before -- I believe it was Friday before Your Honor
14 adjourned the hearing. And I think that we were fairly
15 close. But we're not there yet. And I completely agree
16 with Your Honor that the reimbursement of Mr. Nolan should
17 either be dealt with with those procedures if we are able to
18 reach agreement, or separately on his own application if the
19 procedures are not able to move forward.

20 So I think where I sit on it is whether the
21 payment of fees benefits the estate is going to be an
22 extremely detailed and fact-intensive determination. And I
23 believe that together the Debtors, the Committee, and the
24 United States Trustee can make that determination. And I
25 hope we can get there on the procedures to find a way that

1 we can strike the appropriate balance of making sure that
2 any payment benefits the estate.

3 THE COURT: All right. Ms. Schwartz, do you want
4 to be heard on this?

5 MS. SCHWARTZ: Thank you, Your Honor. Andrea
6 Schwartz for the U.S. Trustee.

7 We are having continued discussions with the
8 Committee. We have some fundamental differences, but we are
9 trying to work through to see as much progress as we can
10 make on it.

11 THE COURT: Okay. Look, you know, one way or the
12 other either as -- hopefully if it can be resolved
13 consensually, fine. I mean, if it can't, then there's a
14 contested motion, the Court will deal with it. So we'll
15 leave it at that for today. Okay? All right.

16 Anything else that we have to cover?

17 MR. KWASTENIET: Thank you, Your Honor. I believe
18 that's it on the agenda. And the Debtors did not have
19 anything further for today.

20 THE COURT: Okay. Anybody else have any issues
21 they want to raise?

22 Mr. Herrmann?

23 MR. HERRMANN: Yes. Immanuel Herrmann, pro se
24 creditor. Thank you, Your Honor. Just a quick thing. I
25 think it would extraordinarily helpful if a transcript of

1 today's hearing could be posted. And I also wanted you to
2 consider -- I mean, I can file a motion, but maybe sua
3 sponte it would be I think very helpful to creditors if we
4 could get transcripts for every hearing basically going
5 forward and backwards. I know there's redaction issues and
6 other issues. But I think for transparency and just going
7 forward, it would be extremely helpful.

8 THE COURT: I won't rule generally. I would
9 request that Debtor's counsel order a transcript for today,
10 that it can be put on. I'm not sure, Mr. Herrmann, I agree
11 that every hearing we've had is worthy of having a
12 transcript posted. There actually have been some not
13 controversial hearings that we've had.

14 MR. HERRMANN: That's true, Your Honor. Well,
15 thank you. I appreciate that. And I'll look at filing a
16 motion or just talking with the Debtors and others about --

17 MR. KOENIG: Your Honor, with your permission, we
18 will order a transcript and then file a notice on the docket
19 that attaches a transcript when it's available.

20 THE COURT: Great. Thank you very much. All
21 right.

22 Mr. Holcomb? Mr. Holcomb, you need to unmute if
23 you want to be heard.

24 MR. HOLCOMB: I'm sorry. Can you hear me, y h?

25 THE COURT: Yes, I can. Go ahead.

1 MR. HOLCOMB: Thank you, Your Honor. Lucas
2 Holcomb, pro se creditor. I've been watching these court
3 proceedings since the case began and I've learned that pro
4 se creditors, including myself, have no idea how to
5 effectively represent ourselves in court. So I do
6 appreciate the approval of the classifying motion.

7 I would like to bring up an issue I've had with
8 the Debtors since approval of the Pure custody withdrawals,
9 which, again, as a pro se creditor I'm not aware if this is
10 the correct process to present this dispute. But since the
11 Pure custody withdrawal began, I have several -- in fact,
12 four accounts with the debtor. And I completed KYC
13 verification on all four of them. And then I started my
14 withdrawal process. There was about \$500 in each account
15 that was in Pure custody. And I had about \$100,000 in Earn
16 split between those four accounts.

17 I did start that withdrawal process. But
18 unfortunately, the withdrawals never came through. And in
19 attempt to log in, I found that my accounts were suspended.
20 I had an email exchange with the Debtors, I believe it was
21 March 2nd, with the customer service. And I complete
22 another third-party KYC verification at their request.

23 However, the customer service discontinued
24 responding to my emails as of March 21st with no resolution
25 to unsuspending my account and allowing me to withdraw my

1 Pure custody assets. And since then, I'm been in contact
2 with (indiscernible), but we have been unable to
3 (indiscernible) resolution on the matter.

4 THE COURT: Mr. Holcomb, let me ask you this. I
5 know you said you've been exchanging emails. Have you been
6 able to speak with one of the lawyers from -- the Debtor's
7 lawyers at this point or just exchanging emails

8 MR. HOLCOMB: I've been exchanging emails with
9 Celsius creditors answers, and they've responded several
10 times. And they've said we are attempting to resolve this
11 issue with the company and appreciate your patience. But
12 again, it's been going on for a little bit now.

13 THE COURT: Mr. Koenig, I see you've moved in
14 front of the microphone. Can you address this?

15 MR. KOENIG: Again, Chris Koenig for the Debtors.
16 Thank you, Your Honor.

17 So, yes, I've been corresponding with members of
18 our team. We've been in contact with Mr. Holcomb. The
19 issue is that his accounts are suspended under the Debtor's
20 procedures. So we need to continue to work through that.
21 We've been exchanging emails with him, and we're happy to
22 continue to do so. But --

23 THE COURT: Let me ask this. Either you or
24 designate someone from your team speak with Mr. Holcomb by
25 telephone. I mean, it can be -- I mean, emails are fine,

1 but it can be frustrating sometimes going back and forth.
2 If it can't be resolved, Mr. Holcomb will have to, you know,
3 seek to get relief from the Court. But would you please
4 reach out and speak with Mr. Holcomb and see whether the
5 issue can be resolved and you can narrow exactly what needs
6 to be done? Okay?

7 MR. KOENIG: We certainly will. Thank you.

8 THE COURT: Okay. Mr. Holcomb, let's move forward
9 on that basis. I don't have facts on which I can rule at
10 this stage. So let's see if you can cut through it by
11 speaking directly with either Mr. Koenig or one of the other
12 lawyers of Kirkland. Okay?

13 MR. HOLCOMB: Thank you, Your Honor. I appreciate
14 that. And I've just emailed him my phone number so he can
15 contact me. Thank you so much.

16 THE COURT: Great. All right.

17 Mr. Porter?

18 MR. PORTER: Thank you so much, Judge.

19 Judge Glenn, I asked you take into consideration
20 the fact that we --

21 THE COURT: You've just muted again, Mr. Porter.

22 MR. PORTER: I'll start again, Judge. I
23 apologize.

24 THE COURT: Go ahead.

25 MR. PORTER: I asked you to take into consideration

1 the fact that we were lied to and most of us are typical
2 retail depositors who fell for Celsius' marketing scheme.

3 Sir, we need to maximize our recovery as creditors
4 and move on with our lives. Under ordinary circumstances,
5 most of us would never consider investing in a hedge fund
6 that has no track record. This would not be a suitable
7 investment for most of the depositors. Please make sure
8 that we are permitted to see all of the competing bids at
9 the appropriate time. The offers that compete with
10 NovaWulf's plan to lock us up into a hedge fund. Please
11 empower our UCC to give the appropriate weighting to our
12 assets on deposits, not the number of creditors with very
13 small balances.

14 Creditors fear a cramdown of NovaWulf's hedge fund
15 plan and we hope to avoid that fate. Allow us to maximize
16 our recovery as soon as possible. We are anxious to put
17 this Celsius experience behind us. Thank you.

18 THE COURT: Mr. Ivane?

19 MR. IVENE: Jason Ivane, pro se creditor.

20 I just wanted to see if there was an update on
21 assets sent in after the petition date. Because I've seen
22 no updates or anything.

23 THE COURT: Okay. I understand that issue. And
24 maybe, Mr. Koenig, can you address that? Because that's
25 been discussed at prior hearings. Obviously it was after

1 the pause and assets were received and they were sort of --
2 go ahead.

3 MR. KOENIG: Thank you, Your Honor. We're in the
4 process of filing the schedule of eligible creditors, and I
5 expect that that's going to be filed in the coming days.
6 It's taken a little bit of time, obviously, but we have had
7 other withdrawals that we've been working on processing.
8 And that is next up in the queue, and it will be filed in
9 the coming days. I expect this week.

10 THE COURT: Okay. Thank you very much.

11 Mr. Mendelson.

12 MR. MENDELSON: Good afternoon, Judge. Thanks
13 again for your time.

14 Very quickly, regarding the class claims, are we
15 allowed to go after the C-suite level executives, the
16 individual executives at Celsius, Alex Mashinsky and Daniel
17 Leon, Nuke, et cetera? Or is it just against business
18 entities?

19 THE COURT: So, look, I can't give you legal
20 advice. I would just say this. There already has been
21 litigation that's been filed against Mr. Mashinsky and
22 others. And the automatic stay does not apply by its terms
23 to anyone other than the Debtor. So I'm not going to give
24 you any legal advice. You're not the only creditor with an
25 interest in pursuing a recovery from any source that's

1 available. I'm going to leave it at that. That's not my
2 role here.

3 MR. MENDELSON: Okay. Thank you.

4 THE COURT: (indiscernible).

5 MR. PELED: Thank you, Your Honor. I represent
6 Ignat Tuganov, who filed a response --

7 THE COURT: You have to -- stop. Just identify
8 you -- I called you by your name, because I see it on the
9 screen.

10 MR. PELED: No problem.

11 THE COURT: I may have mispronounced it. But you
12 have to identify yourself.

13 MR. PELED: Arie Peled of Venable LLP on behalf of
14 Ignat Tuganov. We filed a response to the class claim
15 motion. Your Honor, you ruled on the motion, so I'm not
16 going to get through any of those points. I just wanted to
17 make one point if I could with respect to the proposed
18 order. And you mentioned it when you were discussing it,
19 that you envisioned that customers would be able to file an
20 individual claim if ultimately class cert is denied. We
21 were just hoping that that could be made explicit in the
22 order somewhere so that people have that comfort with
23 respect to the procedure going forward.

24 THE COURT: I guess my response to that would be
25 to work with the Committee's counsel. I thought that there

1 had been an agreement on modifying the form of the order to
2 deal with that. Obviously your client has already filed a
3 claim, filed a lawsuit that raises many of these same
4 issues. So I'm going to leave it at that.

5 MR. COLODNY: Your Honor, we included some
6 language in the proposed order --

7 THE COURT: You have to identify -- Mr. Colodny,
8 you have to identify yourself for the record when you speak.

9 MR. COLODNY: Sorry, Your Honor. Aaron Colodny
10 from White & Case on behalf of the Official Committee of
11 Unsecured Creditors.

12 We included language in the proposed order which
13 was meant to address Mr. Tuganov's objection. We didn't get
14 a chance to discuss it with his counsel.

15 I would propose, and I think the Debtors -- well,
16 I'll let Mr. Koenig speak for himself. But we can include
17 in the proposed order some language that embodies your
18 Court's -- Your Honor's oral ruling that the bar date will
19 be told pending class certification.

20 THE COURT: That's fine. Okay. Mr. Turpin?

21 MR. TURPIN: Basically I think I might just have
22 the same question that was just addressed. So I'm James
23 Turpin, pro se. And I just wanted to know if the -- if the
24 class claim is not certified, is the bar date going to be
25 extended?

1 THE COURT: Yes. The answer is yes.

2 MR. TURPIN: Okay. Because I think many of us
3 have not retained counsel.

4 THE COURT: Right.

5 MR. TURPIN: And if we're out of state or --
6 obviously you mentioned there's many people out of the
7 country. And so it's -- it would be very costly to retain
8 counsel unnecessarily.

9 THE COURT: I agree with everything you've said.
10 And my understanding of class action law is if a class
11 certification motion is denied, the putative class members
12 will be given opportunity to either file a claim or a
13 lawsuit as they choose. So that will have to be dealt with
14 in any order that's entered if class certification is
15 denied. But that is certainly what my intention is, and
16 it's certainly my understanding of what the state of the law
17 with respect to denial of class certification is.

18 MR. TURPIN: Thank you, Your Honor.

19 THE COURT: Okay. All right. Mr. -- don't know
20 whether it's -- I guess Ms. Kuhns. Excuse me. Go ahead.

21 MS. KUHNS: Yes, Your Honor. Good morning or good
22 afternoon. I guess it's afternoon now. Joyce Kuhns for the
23 Ad Hoc Group of Earn Account Holders.

24 First of all, I wanted to extend my appreciation
25 to the Committee for looking forward to a collective

1 process. You've heard today that this has been time-
2 consuming, complicated, and burdensome. And particularly to
3 the Earn account holders. And so we are looking forward to
4 working hopefully cooperatively with the Committee and the
5 constituents to a mutually-beneficial result. I think that
6 a collective voice has been missing, obviously, on behalf of
7 the Earn accountholders. And as I said, I hope we can
8 streamline this process to make it the most effective one
9 for all involved and the most efficient with the least cost.

10 THE COURT: Thank you, Ms. Kuhns.

11 All right. Anybody who has not been heard yet
12 wishes to be heard?

13 All right. The Court is going to stand in recess.
14 We are adjourned.

15 (Whereupon these proceedings were concluded.)
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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: April 19, 2023